Henry B. Edwards to be postmaster at Shuqualak, Miss., in place of H. B. Edwards. Incumbent's commission expired December 6, 1922.

MISSOURI.

I. Scott Jones to be postmaster at Bonne Terre, Mo., in place of W. H. Ward. Incumbent's commission expired September 5, 1922.

Lewis M. Gamble to be postmaster at Mexico, Mo., in place of W. R. Jackson. Incumbent's commission expired September 5, 1922.

Fred A. Grebe to be postmaster at New Florence, Mo., in place of H. H. Davault. Incumbent's commission expired September 5, 1922.

Charles Litsch to be postmaster at Perryville, Mo., in place of A. E. Doerr. Incumbent's commission expired September 5, 1922.

Asa A. Wallis to be postmaster at Piedmont, Mo., in place of Bristol French, resigned.

Emmett R. Lindley to be postmaster at Stanberry, Mo., in place of E. B. Wilson, declined.

William F. Meier to be postmaster at Wentzville, Mo., in place of C. F. Lusby. Incumbent's commission expired December 20, 1920.

MONTANA.

Emily H. Berger to be postmaster at Whitetail, Mont., in place of S. F. Hunt. Office became third class October 1, 1922.

NEBRASKA.

Arthur H. Babcock to be postmaster at North Loup, Nebr., in place of I. A. Manchester. Incumbent's commission expired October 3, 1922.

Myrtle L. Anderson to be postmaster at Republican City, Nebr., in place of T. A. Kelly. Incumbent's commission expired October 3, 1922.

NEW JERSEY.

Elbert Wilbert to be postmaster at Bayhead, N. J., in place of H. E. Forsyth, declined.

Isaac E. Bowers to be postmaster at Groveville, N. J., in place of I. E. Bowers. Office became third class October 1, 1922.

NEW YORK.

John W. Rose to be postmaster at Arlington, N. Y., in place of E. J. McCourt, removed.

Nicholas Reilly to be postmaster at Brentwood, N. Y., in place of Nicholas Reilly. Incumbent's commission expired October 24, 1922.

Arthur N. LeClear to be postmaster at Fairport, N. Y., in place of E. J. Fisk. Incumbent's commission expired November 21, 1922.

NORTH CAROLINA.

Hosea L. Early to be postmaster at Aulander, N. C., in place of M. H. Mitchell, resigned.

Sam J. Smith to be postmaster at Erlanger, N. C., in place of L. A. Richey. Office became third class October 1, 1922.

NORTH DAKOTA.

Martin E. Larson to be postmaster at Marion, N. Dak., in place of J. E. Young, resigned.

Ada M. Patterson to be postmaster at Jud, N. Dak., in place of A. M. Patterson. Office became third class January 1, 1922.

OHIO.

Hylos L. Vesey to be postmaster at Perry, Ohio, in place of W. R. Foster. Incumbent's commission expired September 19, 1922.

George R. Irwin to be postmaster at Upper Sandusky, Ohio, in place of G. R. Irwin. Incumbent's commission expired December 18, 1922.

OKLAHOMA.

John M. Sappington to be postmaster at Holdenville, Okla., in place of Lloyd Thomas, removed.

Dixon L. Lindsey to be postmaster at Marlow, Okla., in place of O. L. Tapp, resigned.

Paul J. Fournier to be postmaster at Quinlan, Okla., in place of V. W. Kent. Office became third class October 1, 1922.

PENNSYLVANIA.

Sara A. Conrath to be postmaster at Dixonville, Pa., in place of F. R. Peightal. Office became third class July 1, 1922.

William E. Mutthersbough to be postmaster at Driftwood, Pa., in place of S. L. Wilson. Incumbent's commission expires March 1, 1923.

George B. Stevenson to be postmaster at Lock Haven, Pa., in place of P. O. Brosius. Incumbent's commission expired September 26, 1922.

Irvin L. Romig to be postmaster at Mertztown, Pa., in place of H. J. Hertzog, declined.

Lester L. Lyons to be postmaster at Pocono, Pa., in place of W. S. Hines. Office became third class July 1, 1922.

Edward W. Workley to be postmaster at Smethport, Pa., in place of E. W. Workley. Incumbent's commission expired October 24, 1922.

Wallace C. Dobson to be postmaster at Southampton, Pa., in place of F. S. Weil. Office became third class October 1, 1922.

TENNESSEE.

Joel F. Ruffin to be postmaster at Cedar Hill, Tenn., in place of J. F. Ruffin. Incumbent's commission expired May 10, 1922.

Lera Page to be postmaster at Rutherford, Tenn., in place of L. W. Davidson. Incumbent's commission expired August 26, 1920.

UTAH.

Annie Palmer to be postmaster at Farmington, Utah, in place of Thomas Brimley. Incumbent's commission expired February 3, 1923.

VIRGINIA.

Henry P. Holbrook to be postmaster at Castlewood, Va., in place of J. T. Dickenson, resigned.

John W. Delaplane to be postmaster at Delaplane, Va., in place of J. W. Delaplane. Office became third class January 1, 1921.

Gunyon M. Harrison to be postmaster at Fredericksburg, Va., in place of J. R. Rawlings. Incumbent's commission expired September 13, 1922.

WASHINGTON.

Egbert K. Field to be postmaster at Ferndale, Wash., in place of F. L. Whitney. Incumbent's commission expired October 14, 1922.

George W. Edgerton to be postmaster at Puyallup, Wash., in place of Robert Montgomery. Incumbent's commission expired October 14, 1922.

Jessie Knight to be postmaster at Shelton, Wash., in place of Jessie Knight. Incumbent's commission expired October 24, 1922.

Clyde J. Backus to be postmaster at Tacoma, Wash., in place of C. W. Stewart, resigned.

Augustus B. Eastham to be postmaster at Vancouver, Wash., in place of J. W. Shaw. Incumbent's commission expired October 14, 1922.

WISCONSIN.

Joseph E. Kuzenski to be postmaster at Stetsonville, Wis., in place of E. O. Erickson, resigned.

CONFIRMATIONS.

Executive nominations confirmed by the Senate February 27, 1923.

POSTMASTER GENERAL.

HARRY S. NEW to be Postmaster General.

SECRETARY OF THE INTERIOR.

Hubert Work to be Secretary of the Interior.

ENVOY EXTRAORDINARY AND MINISTER PLENIPOTENTIARY.

Richard M. Tobin to be envoy extraordinary and minister plenipotentiary of the United States to the Netherlands and Luxemburg.

COLLECTOR OF CUSTOMS.

Emery J. San Souci to be collector of customs at Providence, R. I.

HOUSE OF REPRESENTATIVES.

TUESDAY, *February 27, 1923.*

The House met at 12 o'clock noon and was called to order by the Speaker pro tempore [Mr. CAMPBELL of Kansas].

The Chaplain, Rev. James Shera Montgomery, D. D., offered the following prayer:

With Thee, O Lord, there is mercy and forgiveness, and at Thy right hand there are blessings forevermore. Always enable us to make close obedience to Thy law the rule of our lives, for every commandment is a benediction and a beatitude. Let Thy great truths cross the horizon of our souls, and thus may we find our security and high usefulness in fidelity to the truth in the power of purity and in that peace which keeps the heart. Remember the sick and let the strength, comfort, and the beauty of the Lord abide with them. Amen.

The Journal of the proceedings of yesterday was read and approved.

EXCHANGES OF PROPERTY.

Mr. GREEN of Iowa. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H. R. 13774) to amend the revenue act of 1921 in respect to exchanges of property, disagree to the Senate amendments, and ask for a conference.

The SPEAKER pro tempore. The gentleman from Iowa asks unanimous consent to take from the Speaker's table the bill H. R. 13774 which the Clerk will report by title.

The Clerk read as follows:

An act (H. R. 13774) to amend the revenue act of 1921 in respect to the exchanges of property.

The Senate amendments were read.

The SPEAKER pro tempore. The gentleman from Iowa asks unanimous consent that the House disagree to the Senate amendments and ask for a conference. Is there objection? [After a pause.] The Chair hears none. The Clerk will report the conferees.

The Clerk read as follows:

Mr. GREEN of Iowa, Mr. LONGWORTH, Mr. MILLS, Mr. COLLIER, and Mr. OLDFIELD.

CREDITS AND REFUNDS.

Mr. GREEN of Iowa. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill H. R. 13775, an act to amend the revenue act of 1921 in respect to credits and refunds, disagree to the Senate amendments, and ask for a conference.

The SPEAKER pro tempore. The Clerk will report the bill by title.

The Clerk read as follows:

An act (H. R. 13775) to amend the revenue act of 1921 in respect to credits and refunds.

The Senate amendments were read.

The SPEAKER pro tempore. The gentleman from Iowa asks unanimous consent to disagree to the Senate amendment and agree to the conference asked by the Senate. Is there objection? [After a pause.] The Chair hears none. The Clerk will report the conferees.

The Clerk read as follows:

Mr. GREEN of Iowa, Mr. LONGWORTH, Mr. HAWLEY, Mr. COLLIER, and Mr. OLDFIELD.

MESSAGE FROM THE SENATE.

A message from the Senate, by Mr. Craven, its chief clerk, announced that the Senate had passed without amendment bill of the following title:

H. R. 10287. An act for the relief of John Calvin Starr.

The message also announced that the Senate had passed bills of the following titles, in which the concurrence of the House of Representatives was requested:

S. 3226. An act for the relief of William J. Ewing;

S. 1528. An act for the relief of Sophie K. Stephens;

S. 4152. An act for the relief of Frank A. Jahn;

S. 2792. An act granting a pension to John L. Livingston; and

S. 4622. An act to remit the duty on a carillon of bells to be imported for St. Ann's Church, Kennebunkport, Me.

AMENDMENT OF WAR RISK INSURANCE ACT.

Mr. GRAHAM of Illinois. Mr. Speaker, I call up the conference report on the bill H. R. 10003, and ask that the statement be read in lieu of the report.

The SPEAKER pro tempore. The gentleman from Illinois calls up the conference report on the bill H. R. 10003, and asks unanimous consent that the statement be read in lieu of the report. Is there objection? [After a pause.] The Chair hears none. The Clerk will read the statement.

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H. R. 10003) to further amend and modify the war risk insurance act, having met, after full and free conference have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate to the bill (H. R. 10003) to further amend and modify the war risk insurance act, and agree to the same with an amendment as follows: In lieu of the matter inserted by the amendment of the Senate insert the following:

"SEC. 23. (1) That, except as provided in subdivision (2) of this section, when by the terms of the war risk insurance act and any amendments thereto, any payment is to be made to a minor, other than a person in the military or naval forces of the United States, or to a person mentally incompetent, or under other legal disability adjudged by a court of competent jurisdiction, such payment shall be made to the person who is constituted guardian, curator, or conservator by the laws of the State or residence of claimant, or is otherwise legally vested with responsibility or care of the claimant or his estate: *Provided*, That prior to receipt of notice by the United States Veterans' Bureau that any such person is under such other legal disability adjudged by some court of competent jurisdiction, payment may be made to such person direct: *Provided further*, That for the purpose of payments of benefits under article 3 of the war risk insurance act, as amended, where no guardian, curator, or conservator of the person under a legal disability has been appointed under the laws of the State or residence of the claimant the director shall determine the person who is otherwise legally vested with responsibility or care of the claimant or his estate.

"(2) If any person entitled to receive payments under this act shall be an inmate of any asylum or hospital for the insane maintained by the United States, or by any of the several States or Territories of the United States, or any political subdivision thereof, and no guardian, curator, or conservator of the property of such person shall have been appointed by competent legal authority, the director, if satisfied after due investigation that any such person is mentally incompetent, may order that all moneys payable to him or her under this act shall be held in the Treasury of the United States to the credit of such person. All funds so held shall be disbursed under the order of the director and subject to his discretion either to the chief executive officer of the asylum or hospital in which such person is an inmate, to be used by such officer for the maintenance and comfort of such inmate, subject to the duty to account to the United States Veterans' Bureau and to repay any surplus at any time remaining in his hands in accordance with regulations to be prescribed by the director; or to the wife (or dependent husband if the inmate is a woman), minor children, and dependent parents of such inmate, in such amounts as the director shall find necessary for their support and maintenance in the order named; or, if at any time such inmate shall be found to be mentally competent, or shall die, or a guardian, curator, or conservator of his or her estate be appointed, any balance remaining to the credit of such inmate shall be paid to such inmate, if mentally competent, and otherwise to his or her guardian, curator, conservator, or personal representatives."

And the Senate agree to the same.

BURTON E. SWEET,
W. J. GRAHAM,
SAM RAYBURN,
Managers on the part of the House.

P. J. MCCUMBER,
REED SMOOT,
JOHN SHARP WILLIAMS,
Managers on the part of the Senate.

STATEMENT.

The managers on the part of the House at the conference on the disagreeing votes of the two Houses on the amendments of the Senate to H. R. 10003, an act entitled "An act to further amend and modify the war risk insurance act," submit the following statements in explanation of the effect of the action agreed upon by the conference committee and submitted in the accompanying conference report, to wit:

Subdivision (1) of the bill is the same as the House bill with the following amendment added at the end of the subdivision, to wit:

"*Provided further*, That for the purpose of payments of benefits under Article III of the war risk insurance act, as amended, where no guardian, curator, or conservator of the person under a legal disability has been appointed under the laws of the State or residence of the claimant, the director shall determine the person who is otherwise legally vested with responsibility or care of the claimant or his estate."

This amendment is made in view of a decision rendered by the Comptroller General of the United States to the effect that the Director of the United States Veterans' Bureau may not determine the person who is "otherwise legally vested with the responsibility or care of the claimant" if there is no guardian, curator, or conservator duly appointed, but that the determination of this question is one to be made by the Comptroller General. The amendment provides that for the purpose of payment of benefits under Article III of the war risk insurance act, where no guardian, curator, or conservator of the person under a legal disability has been appointed under the laws of the State or residence of the claimant, the Director of the United States Veterans' Bureau shall determine the person who is otherwise

legally vested with responsibility or care of the claimant or his estate.

Subdivision (2) of the bill is the same as in the bill passed by the House and is practically the same as existing law.

BURTON E. SWEET,
W. J. GRAHAM,
SAM RAYBURN,
Managers on the part of the House.

Mr. GRAHAM of Illinois. Mr. Speaker, this amendment put on the bill by the Senate simply was put on for the purpose of curing a defect caused by a decision of the Comptroller General of the United States. The act as it passed the House was an act that inserted in the existing law the following language: "Persons under other legal disability," in order to take care of a number of beneficiaries under the war risk insurance act whose estates were being wasted by them because there was no method provided by which they could be conserved. In order to conserve them we wrote into the law that persons under other legal disabilities, besides insanity and derangement of mind, would have their estates taken care of. Now, the law as it originally was up to the time we amended it provided this: "Payment should be made to the person who is constituted their guardian, curator, conservator, by the laws of the States where the residence of claimant or as otherwise legally vested with the responsibility or care of the claimant or his estate." You will observe the language was "is otherwise legally vested." The Comptroller General has ruled that where there is no guardian, curator, or conservator of the estate that there is no way of ascertaining who is the person otherwise legally vested with the care of this person's estate and that the Director of the United States Veterans' Bureau, where there was no officer appointed by law, can not designate some one. Therefore, in order to meet that difficulty the Veterans' Bureau has drafted this proviso and has suggested that it be inserted, giving, in all cases where there is no officer authorized by a court, the director the right to designate some one to whom these payments may be made. So that is all the difference between the existing law and was an amendment put on by the Senate and which met with the approval of the conferees. If there are no questions, I ask for a vote.

The question was taken, and the conference report was agreed to.

LANDS DEVISED TO THE UNITED STATES GOVERNMENT, ETC.

Mr. GREENE of Vermont. Mr. Speaker, I ask unanimous consent to take from the Speaker's table Senate Joint Resolution 270, relating to the Battell National Park, a similar resolution in the same text having once passed the House, this being the only means of correcting the parliamentary situation.

The SPEAKER pro tempore. The Clerk will report the Senate joint resolution by title.

The Clerk read as follows:

Senate joint resolution (S. J. Res. 270) concerning lands devised to the United States Government by the late Joseph Battell, of Middlebury, Vt.

The SPEAKER pro tempore. Is there objection? [After a pause.] The Chair hears none. The Clerk will report the resolution.

The Clerk read as follows:

Senate joint resolution (S. J. Res. 270) concerning lands devised to the United States Government by the late Joseph Battell, of Middlebury, Vt.

Whereas Joseph Battell, deceased, late of Middlebury, county of Addison, State of Vermont, in and by his last will and testament devised to the Government of the United States of America about 3,900 acres of land situated in the towns of Lincoln and Warren, in the State of Vermont, for a national park; and

Whereas said lands were devised to the United States of America upon certain conditions, among which were the following: That the Government should construct and maintain suitable roads and buildings upon the land constituting such national park for the use and accommodation of visitors to such park, and should employ suitable caretakers to the end and purpose that the woodland should be properly cared for and preserved so far as possible in its primitive beauty; and

Whereas it is deemed inexpedient to accept said devise and to establish a national park in accordance with the terms thereof: Therefore be it

Resolved, etc., That the acceptance of said devise so made by Joseph Battell in his last will and testament be declined by the Government of the United States, and that the estate of the said Joseph Battell be forever discharged from any obligation to the United States growing out of the devise.

The Senate joint resolution was ordered read the third time, was read the third time, and passed.

MESSAGE FROM THE SENATE.

A message from the Senate, by Mr. Craven, its Chief Clerk, announced that the Senate had insisted upon its amendments to the bill (H. R. 13774) to amend the revenue act of 1921 in respect to exchanges of property disagreed to by the House of Representatives, had agreed to the conference asked by the House on the disagreeing votes of the two Houses thereon, and had appointed Mr. MCCUMBER, Mr. SMOOT, and Mr. JONES of New Mexico as the conferees on the part of the Senate.

The message also announced that the Senate had insisted upon its amendments to the bill (H. R. 13775) to amend the revenue act of 1921 in respect to credits and refunds disagreed to by the House of Representatives, had agreed to the conference asked by the House on the disagreeing votes of the two Houses thereon, and had appointed Mr. MCCUMBER, Mr. SMOOT, and Mr. GERRY as the conferees on the part of the Senate.

BRIDGE ACROSS THE MINNESOTA RIVER.

Mr. NEWTON of Minnesota. Mr. Speaker, I ask to take from the Speaker's table the bill S. 4589, a bridge bill, which has been passed favorably out of the committee in the House, of exactly the same language.

The SPEAKER pro tempore. The gentleman from Minnesota calls up a bill from the Speaker's table, which the Clerk will report.

The Clerk read as follows:

A bill (S. 4589) to authorize the county of Hennepin, in the State of Minnesota, to construct a bridge and approaches thereto across the Minnesota River at a point suitable to the interests of navigation.

Be it enacted, etc., That the consent of Congress is hereby granted to the county of Hennepin, in the State of Minnesota, to construct, maintain, and operate a bridge and approaches thereto across the Minnesota River at points suitable to the interests of navigation in or near the northwest quarter of section 27, township 28 north, range 23 west of the fourth principal meridian, between the Fort Snelling military reservation and Dakota County, in the State of Minnesota, in accordance with the provisions of an act entitled "An act to regulate the construction of bridges over navigable waters," approved March 23, 1906.

SEC. 2. That the right to alter, amend, or repeal this act is hereby expressly reserved.

The bill was ordered to be read a third time, was read the third time, and passed.

The SPEAKER pro tempore. Without objection, a similar House bill will be laid on the table.

There was no objection.

JOURNAL OF THE FIFTY-SEVENTH NATIONAL ENCAMPMENT, GRAND ARMY OF THE REPUBLIC (H. DOC. NO. 604).

Mr. KIESS. Mr. Speaker, I desire to report a privileged resolution from the Committee on Printing.

The SPEAKER pro tempore. The gentleman from Pennsylvania submits a privileged resolution from the Committee on Printing, which the Clerk will report.

The Clerk read as follows:

House Resolution 519.

Resolved, That there shall be printed as a House document the Journal of the Fifty-seventh National Encampment of the Grand Army of the Republic for the year 1923, with accompanying illustrations.

Mr. STAFFORD. That is not privileged. The gentleman has to ask unanimous consent for that.

Mr. KIESS. Mr. Speaker, I move the adoption of the resolution.

The SPEAKER pro tempore. The question is on agreeing to the resolution.

The resolution was agreed to.

STATE TAXATION OF NATIONAL BANKS—CONFERENCE REPORT.

Mr. McFADDEN. Mr. Speaker, I call up the conference report on the bill (H. R. 11939) to amend section 5219 of the Revised Statutes of the United States.

The SPEAKER pro tempore. The gentleman from Pennsylvania calls up a conference report, which the Clerk will report.

The conference report and accompanying statement were read, as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H. R. 11939) to amend section 5219 of the Revised Statutes of the United States, having met, after full and free conference report as follows:

That the conferees are unable to agree.

L. T. MCFADDEN,
PORTER H. DALE,
OTIS WINGO,
Managers on the part of the House.

GEO. P. MCLEAN,
GEORGE WHARTON PEPPER,
DUNCAN U. FLETCHER,
Managers on the part of the Senate.

STATEMENT.

The managers on the part of the House at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H. R. 11939) to amend section 5219 of the Revised Statutes of the United States submit the following statement:

That the managers have been unable to agree.

L. T. MCFADDEN,
PORTER H. DALE,
OTIS WINGO,
Managers on the part of the House.

Mr. MCFADDEN. Mr. Speaker, I move that the House recede and concur in paragraph 5 of the Senate amendment with an amendment.

The SPEAKER pro tempore. The Clerk will report the amendment.

Mr. NEWTON of Minnesota. Mr. Speaker, a parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state it.

Mr. NEWTON of Minnesota. I wish to make the motion to recede and concur. I understand that that is preferential to the motion that has been made, and I make it immediately following the report of the motion.

The SPEAKER pro tempore. The gentleman from Minnesota will be recognized at the proper time, when the parliamentary situation arises. The gentleman from Pennsylvania [Mr. MCFADDEN] has not yet perfected his position. The Clerk will report the amendment offered by the gentleman from Pennsylvania.

The Clerk read as follows:

Mr. MCFADDEN moves that the House recede and concur in paragraph 5 of the Senate amendment with an amendment as follows: In lieu of the matter proposed in said paragraph 5, insert the following: "The provisions of section 5219 of the Revised Statutes of the United States as heretofore enforced shall not prevent the legalizing, ratifying, or confirming by the States of any tax heretofore paid, levied, or assessed upon the shares of national banks, or the collecting thereof, to the extent that such tax was valid under said section."

Mr. STAFFORD. Mr. Speaker, I make the point of order against the motion.

The SPEAKER pro tempore. The gentleman from Wisconsin will state his point of order.

Mr. STAFFORD. The gentleman does not move to recede and concur in the Senate amendment with an amendment, but makes a fractional motion to recede and concur in a fractional part of the Senate amendment with an amendment. You can not divide up one amendment, as the Senate amendment is, and single out merely a paragraph and move to recede and concur with an amendment, as the motion of the gentleman from Pennsylvania seeks to do.

Mr. MONDELL. Well, Mr. Speaker, that has been done frequently. I refer the Speaker to Hinds' Precedents, volume 5, page 6151, and page 6156, where exactly the same procedure was followed. It is certainly in order to offer a motion to a portion of a matter in disagreement.

Mr. WINGO. May I further suggest, Mr. Speaker, to the gentleman from Wyoming and the Chair that not only what the gentleman from Wyoming has said is true, but the present motion of the gentleman from Pennsylvania is certainly in keeping with the spirit, if not with the letter of the agreement that was had at the time this bill was sent to conference; that is, that a separate vote would be permitted in the House on the validation clause of the Senate amendment? This is the validation section. The gentleman is simply trying to keep good faith with the House, and is carrying out that purpose.

Mr. STAFFORD. He should ask unanimous consent for that purpose.

Mr. MONDELL. I am obliged to the gentleman from Arkansas [Mr. WINGO], for reminding me of the agreement that was made, because I was largely responsible for that agreement. The agreement made at the time this bill was sent to conference was that we should do exactly what is proposed now; that is, give the House an opportunity to vote on the so-called validation clause of this bill. If there were no precedent for the action proposed—there are a number, but if there were none—this procedure must be followed if the House is to do what it unanimously agreed to do.

Mr. WINGO. The conferees are just trying to keep faith with the House and do what we promised to do.

The SPEAKER pro tempore. The Chair is ready to rule. The gentleman from Pennsylvania [Mr. MCFADDEN] moves to recede and concur in paragraph 5 of the Senate amendment with an amendment, and moves that the provision of section 5219 of the Revised Statutes of the United States as heretofore in force shall not prevent the legalizing, or ratifying, or confirming by the States of any tax heretofore made or levied or assessed upon a national bank, or the collecting thereof to the extent that such tax would be valid under said section.

The gentleman from Wisconsin [Mr. STAFFORD] makes the point of order that this would be a division of the conference report, which he contends must be voted up or down as a whole, and that a part of it can not be accepted and the other portion rejected.

There are precedents on both sides of the question. The rules of the House are designed for the purpose of enabling the House to accomplish its purposes. They were never intended to prevent the House from doing what it wants to do. An arbitrary rule that would prevent the House from separating a Senate amendment, accepting one portion of it and rejecting another, would be a very arbitrary rule, which would prevent the House, as on this occasion, from doing what the House may want to do. If it should be held that the House could not do this, it would be ruling that the House is impotent under its rules.

On many occasions the House has separated such amendments as have been made by the Senate, accepting one portion and rejecting another. The Chair thinks it is clearly within the right of the gentleman from Pennsylvania to make the motion he has made, and overrules the point of order. The question is on the motion of the gentleman from Pennsylvania.

Mr. ANDERSON. What becomes of the rest of the amendment if this motion is agreed to?

The SPEAKER pro tempore. That question will arise after this motion is disposed of.

Mr. MCFADDEN. Mr. Speaker, in answer to the gentleman from Minnesota I will say to the House that the purpose of the amendment is to fulfill the promise that was made to the House when this bill went to conference—that the House before the matter was entirely settled would be given the right to vote on the House validating amendment and the Senate validating amendment. I want to be frank with the House and say that after this amendment is disposed of one way or the other, it is my purpose to make a further motion to perfect the language in whichever bill is voted for, whether it be the Senate provision or the House provision. I am frank to say that the conferees engaged in this matter are agreed that certain perfecting amendments should be made to other important paragraphs to this amendment.

Mr. WINGO. If the gentleman will permit, the Senate conferees have also agreed that this would have to be changed.

Mr. MCFADDEN. The Senate conferees agreed that whichever bill is passed should have at least some of the amendments I am going to propose.

Mr. SNELL. Will the gentleman yield?

Mr. MCFADDEN. Yes.

Mr. SNELL. Under the conditions the gentleman has stated, it seems to me it would be utterly impossible to have any legislation. It has got to go to conference again and then come back to the House and perhaps have two or three votes. I ask the gentleman if that is not the actual fact.

Mr. MCFADDEN. I would not say that it was. There has been an honest attempt on the part of the conferees; this is an important matter, and we are as anxious to have the matter disposed of properly as anybody.

Mr. SNELL. If it takes as long to get the next conference report as it did this, we will never get a chance to act upon it.

Mr. WINGO. Will the gentleman yield?

Mr. MCFADDEN. Yes.

Mr. WINGO. One reason why we are here, the conferees of the Senate and the House agreed that something should be passed, and we have come back here, keeping the promise that we made to the Members of the House we would do. It is the desire of all the conferees that something should be done, and every effort will be made to have it done.

Mr. SNELL. We supposed that the conferees were going to agree on something, and now the gentleman says he is going to have some other amendments, and that means no legislation this session.

Mr. MONDELL. Mr. Speaker, I think I can assure the gentleman from New York that this matter will be concluded this session. It will not be the fault of the House if it is not. At the time this matter was taken up in the House some time since it was agreed we should have a vote on the so-called validation clause. The conferees have made an earnest effort to reach an agreement on that, and the conferees have, I understand, practically reached an agreement touching other provisions of the bill. The House is asked to-day to decide whether or not we shall adopt the Senate amendment relative to validation or the Senate amendment with an amendment. That being settled one way or the other, a motion will then be made to

meet the views of the conferees on the other portion of the Senate amendment; if that is the judgment of the House, the matter will be practically settled. I can assure the gentleman from New York that this matter will be concluded this session if the action of the House can bring it about. That is the earnest hope and purpose of everybody.

Now, may I say a word in reference to procedure in this matter? The gentleman from Massachusetts, I understand, proposes to offer a preferential motion to recede and concur. Before he does that, may I make this suggestion: If the motion of the gentleman from Pennsylvania is voted on, one vote will practically determine the attitude of the House. If the gentleman from Massachusetts makes this preferential motion to recede and concur, there will be a demand that it be divided. A motion to recede will first be voted upon, and the House having receded, then the motion of the gentleman from Pennsylvaia to concur with an amendment becomes a preferential motion.

Mr. NEWTON of Minnesota. Will the gentleman yield?

Mr. MONDELL. If the gentleman will wait until I state my position——

Mr. NEWTON of Minnesota. I know what it is.

Mr. MONDELL. I have no definite view with regard to this matter. I do not know how I shall vote. I am not disposed to influence any man; my own desire in this matter is to have the House fairly express its judgment. That being true, it is my duty to explain the matter to the House as I understand it. If the gentleman from Massachusetts [Mr. LUCE] makes a preferential motion to recede and concur, it will be divided. The division can not be avoided. The vote then comes on the motion to recede. That being agreed to, then the motion of the gentleman from Pennsylvania to concur with an amendment becomes a preferential motion. So, whether gentlemen desire it or not, the first vote on the merits of this matter must come on the motion to concur with an amendment. Why not have it at once rather than to have a vote and possibly a roll call on the first half of the divided motion to recede and concur? I make this suggestion simply in the interest of saving time. If the gentleman knows of any way whereby you can avoid the procedure I suggest, I would like to have him state it.

Mr. NEWTON of Minnesota. The gentleman said that the first vote after the division would be on receding.

Mr. MONDELL. Yes.

Mr. NEWTON of Minnesota. I disagree with the gentleman. The House and the Senate have disagreed. There is already a disagreement, and a motion to concur after a disagreement is to be preferred over a motion to concur with an amendment, because the motion to concur brings the two Houses together, and the motion to concur with an amendment keeps them farther apart.

Mr. MONDELL. Mr. Speaker, I am retaining my attitude of moderator. I am not trying to influence anybody on this matter. I have given this matter careful consideration and attention, because I want the House to have a fair opportunity to express its views, and I do not know at this moment on which side I shall vote. This is not without consideration of the whole matter. It has been gone over very carefully. I say to the gentleman from Minnesota that under the rule and the uniform practice of the House the motion of the gentleman from Pennsylvania to concur with an amendment will be in order after the House has receded. If the theory of the gentleman were true, then the motion of the gentleman from Pennsylvania to recede and concur with an amendment would be in order now, and would be a preferential motion.

Mr. LUCE. Mr. Speaker, will the gentleman yield?

Mr. McFADDEN. Yes.

Mr. LUCE. In view of what has been said, a word of explanation in anticipation of the motion that I shall make is warranted. It is true that the House was promised a separate vote on the validation amendment. This promise was made four weeks ago last Friday.

Mr. McFADDEN. Mr. Speaker, of course it is understood that I have not yielded the floor.

The SPEAKER pro tempore. The Chair so understands.

Mr. LUCE. The promise of a separate vote on validation was made four weeks ago last Friday. I do not intimate that the conferees have not been diligent. They have passed many, many hours in an attempt to come to an agreement. This morning the gentleman from Pennsylvania discloses that they are not yet in agreement. He intimates, and the gentleman from Wyoming [Mr. MONDELL] makes the same intimation, that there is a possibility of agreement, but in view of the fact that after weeks of deliberation they have been unable to report an agreement, I think we are entitled to assume that the gentleman from New York [Mr. SNELL] was absolutely correct in his statement that if this goes back to conference there will be no legislation.

Mr. MONDELL. Mr. Speaker, will the gentleman yield?

Mr. LUCE. Certainly.

Mr. MONDELL. The gentleman says that there has been no agreement, and that that is evidenced by the fact that here is a report of disagreement. The question has been canvassed very carefully and at great length, and the only possible way in which the pledge of the conferees to give the House a vote on the question of validation could be kept was by bringing in a report of disagreement. The report had to come in in the form of a disagreement. It was not a question whether the conferees had agreed or not. The conferees had agreed to give the House an opportunity to vote, and the only way the House could get that opportunity, save by unanimous consent, which was clearly not obtainable, was by reporting the disagreement.

Mr. McFADDEN. I think it is fair to presume that if it were the disposition on the part of the conferees to delay and not have any legislation, they would not have brought in a disagreement but would have held the matter in conference.

Mr. MOORE of Virginia. Mr. Speaker, I demand the regular order.

Mr. McFADDEN. Why, Mr. Speaker, it has been distinctly understood that I am not yielding, except as a matter of courtesy. I have the floor, and that is the regular order.

The SPEAKER pro tempore. The Chair so recognizes.

Mr. LUCE. Mr. Speaker, I rise to a parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state it.

Mr. LUCE. I desire to offer a preferential motion. Should it be offered now or at the conclusion of the hour belonging to the gentleman from Pennsylvania?

Mr. MONDELL. Mr. Speaker, I desire to submit a unanimous-consent request at this time. I ask unanimous consent, as the gentleman from Massachusetts intends to offer his preferential motion, that there shall be two hours of discussion of the question before the House—one hour to be controlled by the gentleman from Pennsylvania [Mr. McFADDEN] and one hour by the gentleman from Massachusetts [Mr. LUCE]—and that, of course, will give the gentleman from Massachusetts an opportunity to present his preferential motion at any time.

The SPEAKER pro tempore. The gentleman from Wyoming asks unanimous consent that the gentleman from Pennsylvania [Mr. McFADDEN] may have one hour and that the gentleman from Massachusetts [Mr. LUCE] may have one hour in which to discuss the matter before the House. Is there objection?

Mr. LUCE. Mr. Speaker, reserving the right to object, I understand that after the House has considered the question of section 5, to which the amendment relates, other amendments are to be presented. I desire to know from the gentleman from Wyoming whether he contemplates an opportunity to discuss those amendments independently, at the conclusion of the two hours?

Mr. MONDELL. By all means. I should like to make this much shorter, but gentlemen feel that they should have two hours for this debate.

Mr. WINGO. Mr. Speaker, reserving the right to object, I understand that the proposal is that there shall be one hour of debate on a side, for and against the motion. Is it further understood that, in addition to the pending motion of the gentleman from Pennsylvania, the gentleman from Massachusetts has his preferential motion pending?

The SPEAKER pro tempore. It is not now pending; the motion has not been made.

Mr. WINGO. Let me suggest to the gentleman from Wyoming that his unanimous-consent request, which provides for two hours of general debate, one-half to be controlled by Mr. McFADDEN and one-half by Mr. LUCE, on the validating feature, shall also include an understanding that the motions of both gentlemen shall be considered as pending.

Mr. MONDELL. Yes.

Mr. WINGO. And that a demand for a division, voting first on receding, is to be made, and that the previous question shall be considered as ordered with both motions pending.

Mr. MONDELL. That is agreeable.

Mr. WINGO. That is satisfactory to this side.

Mr. McFADDEN. Mr. Speaker, I want it distinctly understood that when this matter has been disposed of, I want to make a further motion to perfect the text.

Mr. MONDELL. We will take that up separately.

The SPEAKER pro tempore. The unanimous consent as heretofore preferred will not foreclose the gentleman from Pennsylvania from offering an amendment.

Mr. LUCE. Would it foreclose the gentleman from Massachusetts from offering an amendment?

The SPEAKER pro tempore. It would not prevent the discussing of the amendment under the time limit allotted.

Mr. LUCE. I withdraw my reservation.

The SPEAKER pro tempore. Does the gentleman from Massachusetts desire to have his amendment pending?

Mr. LUCE. I do. I move to recede and concur.

The SPEAKER pro tempore. The gentleman from Massachusetts moves to recede and concur in the Senate amendment, and that is to be considered pending along with the motion of the gentleman from Pennsylvania.

Mr. GREENE of Vermont. Mr. Speaker, there seems to be some misunderstanding as to the unanimous-consent agreement.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wyoming, coupled with the request of the gentleman from Arkansas?

Mr. GREENE of Vermont. Let it be restated, if the Chair pleases.

The SPEAKER pro tempore. That there shall be two hours of debate upon the motion to recede with an amendment and to recede and concur.

Mr. WINGO. And the previous question shall be considered as ordered.

The SPEAKER pro tempore. That the previous question shall be considered as ordered and the time shall be equally divided. Is there objection? [After a pause.] The Chair hears none.

Mr. NEWTON of Minnesota. Mr. Speaker, it seems to me we should have a quorum for this discussion and I make the point of order that there is no quorum present. Mr. Speaker, I withdraw that.

Mr. McFADDEN. Mr. Speaker and gentlemen of the House, the proposition before the House at this time is clear and distinct. The House on June 14, 1922, passed the bill (H. R. 11939) which proposed to amend section 5219 of the Revised Statutes of the United States. I am sure that the Members of the House will recall that that is the statute that was enacted when the national bank act was passed in 1864 and amended four years later. The purpose of this amendment was to give the States the right to tax the value of national bank shares, with certain limitations. For the purpose of getting this matter clearly before the House I am going to read section 5219 of the Revised Statutes:

SEC. 5219. Nothing herein shall prevent all the shares in any association from being included in the valuation of the personal property of the owner or holder of such shares, in assessing taxes imposed by authority of the State within which the association is located; but the legislature of each State may determine and direct the manner and place of taxing all the shares of national banking associations located within the State, subject only to the two restrictions, that the taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State, and that the shares of any national banking association owned by nonresidents of any State shall be taxed in the city or town where the bank is located, and not elsewhere. Nothing herein shall be construed to exempt the real property of associations from either State, county, or municipal taxes, to the same extent, according to its value, as other real property is taxed.

Now, the Senate provision in the present bill before us is an attempt to ratify a tax which has been collected by some States in contravention of section 5219. In one instance, and particularly that of the State of New York, the supreme court of that State has declared that the State of New York did discriminate and tax the national banks beyond the authority imposed in section 5219. In connection with that it will be necessary to consider the recent decision of the United States Supreme Court in the case of the City of Richmond against the Merchants National Bank of Richmond.

It is also necessary to take into consideration the fact that two years ago the State of New York changed its method of taxation by passing an income tax law wherein they exempted certain moneyed capital which was in competition with national banks from taxation. Hence this discrimination was clearly proven in the Supreme Court of the State of New York in a similar case brought by a State bank in New York State. Only about 10 days ago the supreme court again decided—and sustained its previous decision—and decided, as I understand it, that they had also discriminated against the tax levied on State banks. Now there is involved in litigation in the State of New York and State of Massachusetts—and I think some other States are also involved—several million dollars—some thirty or forty million dollars—of taxes which those States have collected illegally and which are held up by this litigation. Now, the attempt here in these two amendments between the House and Senate is to get Congress to validate and permit the States to retroactively collect and maintain this tax and say definitely to the State of New York that the Congress of the United States is willing to let you collect from national banks and your State banks taxes which your supreme court has decided are invalid. Now, if section 5219 of the Revised Statutes had not been passed, the States would have no right to tax at all these national institutions, namely, the national banks. The question involved in this issue is clear. The House has gone, in voting as they did on June 14 last, as far as they felt they could go at that time in giving the States the right to validate and collect, if possible, these funds when we said in our amendment as follows, which is section 3, page 2, of the bill, which was stricken out by the Senate:

3. That the provisions of section 5219 of the Revised Statutes of the United States as heretofore in force shall not prevent the legalizing, ratifying, or confirming by the States of any tax heretofore paid, levied, or assessed upon the shares of national banks, or the collecting thereof, to the extent that such tax has been or is in accord with the provisions of paragraph 1 of this section: *Provided*, That this shall not apply to taxes attempted to be levied before January 1, 1917.

Now, this is as far as the House or the committee which reported the bill to the House, and which the House voted on and accepted, thought we were justified in going, and is as far as your managers on the part of the House have gone in the conference, and explains in part why the bill was to-day returned to the House in disagreement.

I am frank to say that the other gentlemen say it was a mere gesture. We do not think so. The Senate provision is clearly an attempt on the part of those people who want to collect this money, which the Supreme Court of the State of New York says is invalid to collect, and this is their provision, which is known as the Calder amendment in the Senate, to wit, section 5:

That the act of a State legalizing, ratifying, or confirming a tax heretofore levied or assessed upon shares of national banking associations, or providing for the retention by said State of any of the tax heretofore paid, shall not be deemed hostile to, or inimical to the interests of, the United States or any agency thereof: *Provided*, That the amount retained, or to be retained, by such State is not in any case greater than the tax imposed for the same period upon banks, banking associations, or trust companies doing a banking business, incorporated by or under the laws of such State, or upon the moneyed capital or shares thereof.

I want to call your attention particularly to that clause. You will notice that there is no provision that there shall be any taxation of the shares or money invested in private banking in this bill, and I am sure that the Members of the House who are inclined to go as far as to pass such an act as is proposed here would want to improve the language in this bill.

Mr. STAFFORD. Mr. Speaker, will the gentleman yield in that particular?

Mr. McFADDEN. Yes.

Mr. STAFFORD. The gentleman has just called attention to the phraseology of the House bill, paragraph 3, which provides "that the provision of section 5219 of the Revised Statutes as heretofore in force shall not prevent." Now, the pending amendment—and I wish to call the attention of the entire body to this, because I think this is vital——

Mr. McFADDEN. I beg the gentleman's pardon. I was yielding to the gentleman for a question. Let me finish my remarks.

Mr. STAFFORD. All right, sir.

Mr. McFADDEN. There are other gentlemen who are to speak on this subject, and I do not want to consume all the time.

I simply wanted to point out that if this provision were to prevail in the Senate, it would not do what is claimed for it. It would still continue a discrimination, and I predict that if this Senate provision is adopted it only means more lawsuits. It means that this matter will be returned to the legislatures affected and in turn put up to the highest courts of the States, and unless I largely miss my guess it means that it must be submitted to the Supreme Court of the United States before the matter is settled.

My understanding is that many gentlemen here want to vote on this question of validation one way or the other, and I wanted to bring it before the House so that the House could first express itself on the validation clause. And whether the House or Senate provision is adopted, it is my intention to offer perfecting amendments to other paragraphs of the bill.

Mr. Speaker, how much time have I used?

The SPEAKER pro tempore. The gentleman has used 10 minutes.

Mr. SNELL. Mr. Speaker, will the gentleman yield for one question before he sits down?

Mr. McFADDEN. Yes.

Mr. SNELL. Has there been any injustice done to individual taxpayers paying these taxes up to the present time?

Mr. McFADDEN. Reports say there has been. I know what the gentleman is driving at, and I am willing to say frankly that this is not a direct attempt of the national banks to avoid taxation; they are willing and ready to pay a just and proportionate share of taxes, but they are not willing for the

States to be permitted to tax them without limit, and I do not think it is proper now for Congress to permit the opening up of the question and allow the States to tax without limit the national banks. We are here to protect the national banks, and if section 5219 of the Revised Statutes means anything it means to prevent the banks from being overtaxed.

Mr. SNELL. They have paid more than their share thus far?

Mr. McFADDEN. I do not know that the national banks have generally been discriminated against. There are only one or two or three States where this matter has gotten into the courts, but I understand the national banks are willing to pay their share of the proper tax. In some of the States where this matter has come up the taxing authorities of the States have come to an amicable arrangement regarding the payment and settlement of the taxes of national banks.

Mr. STAFFORD. Will the gentleman explain to the House something about his amendment, and how it is superior to that carried in the Senate bill?

Mr. McFADDEN. Members who will speak later will cover that phase of it.

Mr. STAFFORD. Of course, we are all interested in hearing about that.

Mr. McFADDEN. I understand that; and the full information will be presented in due time. I yield to the gentleman from Massachusetts [Mr. LUCE].

The SPEAKER pro tempore. The gentleman from Massachusetts is recognized.

Mr. LUCE. Mr. Speaker, first in as simple a statement of the issue involved as it is in my power to make, let me say that when the national bank act was passed it was deemed prudent to secure or try to secure that national banks should not be harrassed or taxed out of existence by the States, and to that purpose a provision was inserted in the law of more than 50 years ago to the effect that national banks should not be taxed more than moneyed capital in the hands of individuals.

This has been the subject of repeated discussion and interpretation by the courts. The intention of the framers of the law was clearly stated almost contemporaneously by Chairman Pomeroy of the House Committee on Banking and Currency in 1868, when he said his impression was that the words "capital in the hands of individual citizens" meant shares of State banking institutions, and this was the interpretation put upon the law by common consent throughout the country until a year or two ago, when in what has become somewhat famous as the Richmond Bank Case the Supreme Court of the United States went further than it had ever gone before with this language defining "moneyed capital in the hands of individual citizens":

Investments of individuals in securities that represent money at interest.

This meant that the test of fair taxation was not merely to be competitive banking capital but money in the hands of individuals invested in securities at interest. This suggested to shrewd lawyers that the national banks in certain States might recover back those funds that had been paid for taxes under the interpretation of the statute that prevailed commonly for half a century.

The result is that in my own State suits have been brought for the recovery of more than $10,000,000. The suits against the city of Boston alone aggregate about $6,000,000, with the expectation that this spring will bring them up to $10,000,000, and that throughout the State something like $15,000,000 or $20,000,000 in all is at issue. Gentlemen from New York will show you how much greater the amounts are there.

This money has been distributed to the cities and towns. It has been expended in the ordinary processes of government for police and fire protection, for the payment of teachers, and for like municipal purposes. If these suits prevail, and if the House does not see fit to approve my motion to-day, in all probability the cities and towns of Massachusetts will be required to return to the national banks concerned at least $15,000,000. I may say, therefore, that in making the motion that I do——

Mr. MOORE of Virginia. Will the gentleman state what his motion is?

Mr. LUCE. My motion is to recede and concur, which in effect will adopt the Senate amendment.

Mr. McSWAIN. Is that what is known as the Kellogg amendment?

Mr. LUCE. Yes.

Mr. DALE. Does the gentleman concede that these taxes that would have to be paid back were illegally collected under the law?

Mr. LUCE. I prefer to take that up later. Here I desire to point out that in championing the Senate bill I am speaking for the citizens of Massachusetts, and I am aligning myself against sundry national banks. I conceive it my duty to defend the citizens of Massachusetts against their unrighteous demand. If that be treason, my friends of the national banks may make the most of it. They are my friends, many of them my personal friends. I am here to save them from themselves.

But before continuing the discussion of that point let me tell you what it is desired to accomplish. The taxing authorities of the States, with whose arguments I agree, wish to embody in the legislation simply the conception of the law that everybody entertained for 50 years—the conception that the test should be capital competing in the business of banking. In this particular the Senate and the House bills do not materially differ. So that issue is no longer important.

There are other things, however, in regard to the future as to which the conferees do differ. After a month of discussion they have been unable to reach an agreement. The gentleman from Pennsylvania, before the afternoon is concluded, will urge you to send this back to the conferees, who have spent many weeks in trying to get together, and that is the reason why the understanding reached a month ago as to a separate vote on the validating provision should not have determining weight at such a juncture in the session as this, for it must be apparent to any reasonable man that if this bill goes back to conference it is the end of the bill.

The real vital question at issue now is whether we shall permit the banks to extract from the treasury of the States these taxes they say have been collected from them illegally. In discussing the matter with various gentlemen of the House, there has appeared a feeling of natural reluctance to enact what is known as retroactive legislation. Some of them do not understand that the inhibition against ex post facto laws relates purely to criminal statutes. All of them entertain an instinctive objection to changing conditions, however erroneous or unfortunate or mistaken they were, which have become history. Let me point out to these gentlemen in the first place that validating laws have been common in all the legislative bodies of the land. The curing of mistakes or errors is one of the frequent tasks of legislative bodies. Let me further point out to them that court after court has held that back taxes may be levied by the tax authorities. We ask here simply that you permit the legislatures to back tax. Our justification for that may be found in the pithy statement of the legal principle by Justice Holmes in a case decided last spring, "A tax may be imposed in respect of past benefits." I want that to sink in—"a tax may be imposed in respect of past benefits."

Mr. WILLIAMSON. Will the gentleman yield?

Mr. LUCE. Yes.

Mr. WILLIAMSON. In our State the national banks have paid the tax as levied by the State and have started suits to recover them back. Is that the same situation in Massachusetts?

Mr. LUCE. Yes.

Mr. WILLIAMSON. And this is a matter of confirming what has been done?

Mr. LUCE. Yes. But we will understand the situation better if we avoid the words "confirming," "validating," "ratifying," and use an expression that more clearly discloses the intent—to back tax the banks.

Mr. GRAHAM of Illinois. If it will not interrupt the gentleman, would the gentleman mind stating the distinction between the House provision and the Senate provision?

Mr. LUCE. The House amendment permits back taxing, and I trust no member of the Banking and Currency Committee who last June consented to submitting that provision will raise the issue that we have not the right to back tax. The House provision said that you should back tax only to the extent of the limitation provided in the earlier part of the bill. The Senate back-taxing provision says that you can not back tax at a higher rate than that imposed upon State banks and trust companies.

Mr. McFADDEN. Mr. Speaker, will the gentleman yield?

Mr. LUCE. Yes.

Mr. McFADDEN. Will not the gentleman please explain what that previous item is in the House bill?

Mr. LUCE. The House provision says that the back tax shall not be at a greater rate than is assessed upon other moneyed capital in the hands of the individual citizens of such a State coming into competition with the business of national banks.

Mr. McFADDEN. That is exactly the provision that is now in section 5219 of the Revised Statutes, is it not?

Mr. LUCE. The words are not the same, but the purpose is to accomplish what before the Richmond decision the original language was commonly supposed to mean.

Mr. McFADDEN. So that it would not be retroactive if it complied with the present law.

Mr. LUCE. If the present law is to be applied as the Richmond decision forecasts, it will cost the people of Massachusetts $15,000,000, possibly much more.

Mr. DALE. Mr. Speaker, will the gentleman yield?

Mr. LUCE. Yes.

Mr. DALE. If I am mistaken about this I am sure the gentleman will correct me. Is not this the distinction between the two Houses, the House provision and the Senate provision. They both back tax, but the House provision does not back tax what the courts have held to be illegal, whereas the Senate provision does back tax precisely what the courts have held to be illegal.

Mr. LUCE. I do not desire to contest the point.

Mr. STEVENSON. Mr. Speaker, will the gentleman yield?

Mr. LUCE. Yes.

Mr. STEVENSON. And did not the House provision also authorize the collecting or retaining of all the taxes which had been illegally collected, provided it were made legal by also back taxing the men who had escaped, and who had been taxed only one-third as much as this capital? Was not that the provision which the House made?

Mr. LUCE. Possibly. Hastening on I may say that we, therefore, have had it established by the unanimous opinion of the committees of both branches that we may authorize back taxes. If we can empower a State to impose a tax, it is inevitable that we have the right to empower a State to impose a back tax. The things follow each other as the night the day.

Mr. MOORE of Virginia. Does the gentleman think a back tax that was never authorized by the law can retroactively be imposed?

Mr. LUCE. We can impose a tax that was never authorized by law, under numerous decisions of courts. If we may impose a tax that was never authorized by law, inasmuch as Justice Holmes says that a tax may be imposed in respect of past benefits, it is inevitable that we may impose back taxes. You can not make fish of one and flesh of another.

Mr. REED of West Virginia. Mr. Speaker, will the gentleman yield?

Mr. LUCE. Yes.

Mr. REED of West Virginia. The House fixed the period in the past beyond which you can not do so. Does the Senate do that?

Mr. LUCE. It does not.

Mr. WINGO. I suggest to the gentleman that the proposal of the gentleman from Pennsylvania eliminates that date, because that date is immaterial, agreed so by both conferees. The only difference between the House and the Senate is in the degree to which they will retain the amount.

Mr. MOORE of Virginia. Mr. Speaker, I think the gentleman must have misunderstood the question that I put to him a moment ago, which was this: Would it be competent for Congress now to establish a retroactive system of taxation running back into the past indefinitely?

Mr. LUCE. Absolutely. The courts have decided it a hundred times.

Mr. MOORE of Virginia. The courts have decided that collections can be made where the law authorized the imposition of the tax, and the law was not executed, but I had not understood that it is competent for Congress or a State legislature to devise a new system of taxation and make it indefinitely retroactive.

Mr. LUCE. It does not make any difference whether new or old. The principle of Justice Holmes is inescapable—a tax may be imposed in respect of past benefits. Nobody can get around that statement.

Mr. DENISON. But who is to be the judge of past benefits?

Mr. LUCE. The legislative power.

Mr. DENISON. Is that a question purely of legislation?

Mr. LUCE. Yes.

Mr. DENISON. If that is true, then the Congress can enact a law and fix a back tax and impose it for any number of years back, and if the people at that time had known such a thing could be done, they might never have engaged in the business at all. Is that true?

Mr. LUCE. I rely entirely upon what Justice Holmes said.

Mr. DENISON. There is just one decision on that question?

Mr. LUCE. Oh, no; many.

Mr. DENISON. Will the gentleman insert some of them in the RECORD?

Mr. LUCE. The gentleman may examine Grim *v.* Weissenberg School District (57 Pa. State, 433); Stockdale *v.* Insurance Companies (20 Wall. 323); Wagner *v.* Leser et al. (239 U. S. 207); Forbes Line *v.* Commissioners of Everglades (42 Sup. Ct. Rep. 32); United States *v.* Heinszen & Co. (206 U. S. 370), and other cases therein cited.

Mr. FAIRCHILD. Mr. Speaker, in answer to the suggestion made by the gentleman from Virginia [Mr. MOORE], it is true that the courts have decided that where a State originally had the power to tax it can tax retroactively or ratify an illegal tax, but that is not this case, because in this case the States in question originally did not have the power to tax. I would like to have the gentleman from Massachusetts point out how this proposition that endeavors to give a State the power to ratify where they did not originally have the power to tax is analogous to the cases in the courts that the gentleman refers to.

Mr. LUCE. Let me first say that we do not by this legislation ourselves ratify, validate, or back tax. We simply say that we waive our rights if any exist; we throw the matter back to the State, where the State legislature will now decide whether it is justified in back taxing the national banks.

Mr. FAIRCHILD. If the gentleman will yield, I call attention to the fact that the Supreme Court of New York has decided that this tax was collected illegally on the ground that the State of New York did not have the power to tax, and I would be very glad to hear the gentleman from Massachusetts explain how he can apply to such a proposition the cases to which he refers, which are limited to where the State originally had the power to tax.

Mr. LUCE. Justice to others requires that I give some part of my time to them, and I wish I might be excused from trying to navigate further the perilous, difficult intricacies of the law on this question. I am relying upon the statement of Justice Holmes that we have the right to tax for past benefits, and we must leave it to every State to determine by its legislature, as controlled by the Supreme Court, how far and in what way it may tax for past benefits. All we are trying to do is to say that we, representing the national sovereignty, will not assert any rights that we may possess in the matter in issue.

Mr. McFADDEN. Will the gentleman explain how the Legislature of the State of New York, for instance, can override the Supreme Court of the United States, wherein it has decided that they have collected these taxes in violation of section 5219?

Mr. LUCE. I have not the time to enter into an explanation. Let New York fight her own battles. All we may say is that we will not interfere.

Mr. MACGREGOR. Was this in the light of the Richmond case?

Mr. McFADDEN. I call attention to the fact that in the State of New York the trouble principally came about by the passage of the progressive income tax law, in which they discriminated against national banks by exempting private bankers from any tax on their investment capital.

Mr. LUCE. Mr. Chairman, I promised myself to use but half an hour, in order that I might be just to other gentlemen who wish to speak.

Mr. OLIVER. If the gentleman will permit, can the gentleman briefly state the question before the court in the case from which he has quoted?

Mr. LUCE. The Florida case?

Mr. OLIVER. Yes.

Mr. LUCE. I simply took out from it this one legal principle which everybody admits, because I have never seen it more succinctly stated.

Mr. OLIVER. It is not dictum in that opinion; it is material to the subject matter itself.

Mr. LUCE. I should say it was. Now, let me address myself to the other phase of the question. I told you that I had come to the defense of the people of Massachusetts. I believe I have also come to the defense of the national banks of Massachusetts, and indeed those throughout the land. This money that the banks ask to be given back was taken from the depositors, and from all others who bought service of the banks, with the tacit understanding that it was taken to meet part of the overhead charges, in common with the money necessary for insurance, rent, light, heat, and other items of running expense. The price of service to customers was raised proportionately. Now, the banks, having extracted this money from their customers, desire to extract it also from the taxpayers. [Applause.] I call to your attention that the pitiable and wretched situation of the banks is hardly such as to warrant this unrighteous conduct, in view of the fact that the total deposits of the national banks of this country in one year increased from $14,500,000,000 to $16,500,000,000. I call attention to the fact that the most important bank in Boston, when it had brought suits for the recovery of $3,464,637 paid in

taxes, with interest, had in the same six years increased its surplus by more than $20,000,000.

Mr. DENISON. Will the gentleman yield?

Mr. LUCE. I have not the time, I regret to say. I call attention to the fact that this thing is being done despite of conditions that should prompt every prudent banker to take an opposite course. I recall what was said about the execution of the Duc d'Enghien, perhaps by Talleyrand: "It is worse than a crime; it is a blunder." In the face of the criticism of banks all over the country, the prejudice against banks, the coming onslaught upon the banking system, bankers take the unholy attitude that on a legal quibble they will avoid paying their fair share of the public burdens.

Mr. SNYDER. Will the gentleman yield?

Mr. LUCE. I can not. I do not believe that they would voluntarily and with malice aforethought do such an indefensible thing, but they have been told by shrewd lawyers that they are the trustees of their stockholders, that if they fail to take any opportunity by the exercise of legal rights to secure money which may be technically due to the stockholders they will be held responsible. My friends are between the devil and the deep sea, between their consciences on the one hand and their lawyers on the other hand. I am here to speak for them, to save them from living with uneasy consciences the rest of their lives. I am here to get them out of the dilemma. I am also here to speak for from 18 to 20 States that are imperiled in the same way as Massachusetts. I am here to speak for my favorite doctrine of the right of every State to govern itself and to handle its own affairs, as far as consistent with the power conferred on the Nation by the Constitution.

If you adopt the Senate bill, you allow the State to determine for itself its method of taxation. You cease your interference with a situation which has been brought about purely by legal technicalities. You return to an interpretation of the law that prevailed for 50 years. You permit justice and equity to prevail.

In all the hearings and conferences on this matter—and they have been many—to the best of my recollection I have never heard one single man say that the proposal embodied in the House bill is right. All its defenders have relied upon legal defenses and legal excuses. Not a man has argued before us that the thing itself is fundamentally right. I am asking that you vote to-day not on the ground of technicalities or quibbles or the action of this or that court, I am asking you to vote to-day for what is equitable and just and right. [Applause.]

Mr. McFADDEN. Mr. Speaker, I yield to the gentleman from New York [Mr. HUSTED].

The SPEAKER pro tempore. The gentleman from New York is recognized.

Mr. HUSTED. Mr. Chairman, there is just one basic difference between the House provision and the Senate provision, and that is this: The House provision allows the doing by the States of a legal act. The Senate provision authorizes the doing of an absolutely illegal and futile act, which will accomplish nothing except to make bad matters worse——

Mr. EVANS. Mr. Speaker, will the gentleman yield?

Mr. HUSTED. I can not yield. My time is so short. I am sorry.

It is perfectly clear and self-evident that the States can not tax national-bank shares without the consent of the Federal Government. It is also perfectly clear that the Federal Government has given a conditional consent. The Federal Government has said to the States, "You may tax national-bank shares, but you can not tax them unless they are assessed locally, and unless they are so assessed that you do not discriminate in favor of private capital employed in the same business."

Now, in 1920 the State of New York enacted a State income tax law, and under the provisions of that law they arranged for the taxation of national-bank shares in a way that discriminated in favor of private capital employed in the same kind of business, and under the provisions of the income tax law these illegal assessments were levied locally upon national-bank shares. Well, the Hanover National Bank went into court and brought a certiorari proceeding, and the case went to the supreme court of the State, and finally to the court of appeals, which is the highest court in the State of New York; and the court of appeals held that the assessment was absolutely illegal and void for lack of constitutional power to assess.

Now, what are you trying to do here in the Senate amendment? You are trying to legalize and confirm assessments that are not only void but assessments that were absolutely void ab initio for lack of power to make them. You are trying to put life into something that never existed. You can ratify and confirm the defective execution of a power, but here no power existed, and how are you going to ratify and confirm something that never had any legal validity?

It may be a popular thing to vote for this thing, because it appeals to the people; but it will not be popular a year from now, when the people realize that you have put them in a hole; because there is just enough in this Senate provision to induce the States to pass ratifying legislation; just enough to induce the banks to resist, and just enough to create delay and additional expense, and eventually the banks will have to be repaid, because the taxes were void ab initio.

There is one thing you can do. You can provide for a reassessment for these back years, provided you do it legally and in conformity with the statute, and that is what the House provision permits. That is all you can do. That is as far as you can go. Then, why attempt to do something here which is absolutely illegal, unconstitutional, and futile, which will never get you anywhere, because you are trying to ratify and confirm something that was absolutely void from the beginning. It ought to be apparent to everybody, whether he is a lawyer or whether he is a layman, that such a thing is impossible, because there is nothing existent upon which the law can operate. [Applause.]

Mr. Speaker, I yield back the remainder of my time.

Mr. LUCE. Mr. Speaker, I yield 10 minutes to the gentleman from New York [Mr. MILLS].

The SPEAKER pro tempore. The gentleman from New York is recognized for 10 minutes.

Mr. MILLS. Mr. Speaker and gentlemen of the House, after the clear review given by the gentleman from Massachusetts [Mr. LUCE] and the discussion that has already been had to-day and on previous occasions, I am not going to review the general proposition; I am going to deal specifically with the validating proposition, and I am going to deal with it entirely from the angle of New York State by reciting to you just what has been done in our case, so that you can judge for yourselves just where the equities lie.

For 20 years the National and State banks in the State of New York paid 1 per cent on the capital stock. Personal property in the hands of individuals paid the local rate, whether below 1 per cent or above 1 per cent. But the personal property tax in the State of New York was a dead letter. We collected from intangible property not more than six or seven million dollars from all the people of the State, while in 1918 we were collecting $5,500,000 from the banks alone. Why was this? Let me explain, and I want to illustrate the reason, by using the same old private-banker example. Assuming you had a partnership with 10 members, each one of these 10 members was liable for all the liabilities of the firm, and in New York we permitted a debt reduction from the assets for tax purposes. On the plus side each had one-tenth of the assets, but the law permitted him to deduct a liability, and therefore he was allowed to deduct 100 per cent from the 10 per cent. No one prior to the passage of the income tax law paid less personal property taxes than the private banker.

What happened? The State of New York got away from the old archaic tax system and passed an income tax law, and the taxpayers that had been contributing six or seven million dollars contributed the following year $35,000,000, and that is the law which is held to discriminate against banks. The amount of their contributions has risen as the resources have increased, so that to-day they contribute probably $8,000,000 a year. But the people who formerly contributed $4,000,000 or $5,000,000 are now contributing $35,000,000 under the law which the court of appeals held was discriminatory.

Why did it hold that it was discriminatory? Because it was bound by the decision of the Supreme Court of the United States in the Richmond case, which changed the interpretation of the law that had been accepted for 50 years. They changed the interpretation. Some smart lawyers in New York City quickly saw the opportunity. They went to the banks and on a contingent-fee basis carried the case to the court of appeals—bound by the decision of the Supreme Court of the United States—saying that the State had exceeded its authority.

From a legal standpoint it has been repeatedly held that where the legislature had made a mistake and exceeded the authority in matters of this kind, or where the Executive had exceeded his authority the legislatures can validate the action taken.

For instance, in 1902 the President undertook to levy a tariff duty on imports into the Philippines. The court held his action absolutely illegal, but the Congress validated it, and every cent of duty paid was never repaid. You will find case after case of that kind in the books in the State courts, local courts, and in the Supreme Court of the United States.

The States, acting under the authority which was granted them, did that which the Supreme Court said they should not have done, though they had been doing it for many years. What we are asking the Congress to do to-day is to say that the States were right for 50 years and we are going to validate their acts.

Mr. STEVENSON. Will the gentleman yield?

Mr. MILLS. Yes.

Mr. STEVENSON. Has the legal authority of any State, until New York did it in 1919, ever claimed that there was a right to levy an income tax on dividends coming from national banks?

Mr. MILLS. No.

Mr. STEVENSON. Is not that the one thing——

Mr. MILLS. The gentleman knows that that is a minor point and that it crept in through an error and the national banks of the State of New York did not even protest.

Mr. STEVENSON. Did they impose it on the private bankers?

Mr. MILLS. Yes. The gentleman is aware, I believe, that the capital employed in banking business should be taxed on the same basis.

Mr. STEVENSON. Will the gentleman agree then that the validation clause which we put on could have been complied with absolutely by putting the tax on the great international bankers of Morgan & Co. equal to what they paid by the national banks?

Mr. MILLS. No. The gentleman is entirely wrong. The only way we could validate under the House provision would be by repealing the income tax law as passed that yields $35,000,000 a year, and by changing our modern scientific taxing system, and going back to the general property tax. We could do that if we were willing, but no State would be crazy enough to do it.

Mr. STEVENSON. The gentleman evades the question. Could it not be validated by going back and putting the same tax on Morgan & Co. that you did on the national banks?

Mr. MILLS. Mr. Speaker, I did not yield to the gentleman for a speech. What, then, is the situation? The banks pay these taxes for 20 years, which they never question. You next find a decision of the Supreme Court changing the interpretation of the law, and a law which increased the taxation of these people by $30,000,000 declared all of a sudden unconstitutional under the terms of the Supreme Court decision. You find the banks taking advantage of it. What are you going to do? Are you going back to 1921 and say that the Richmond decision is not what Congress meant? Are you going back to 1921 and say that because of a technicality you are not going to allow these national banks to retain literally in my State over $20,000,000 which they are taking out of their fellow taxpayers when they take it out of the State treasury? Oh, no. There is really but one side to this question. I maintain that from a legal standpoint, and certainly from a moral standpoint, these national-bank taxes should be paid, and the only way to pay them is to validate under the Senate clause.

I yield back the remainder of my time.

Mr. McFADDEN. Mr. Speaker, I yield 10 minutes to the gentleman from Alabama [Mr. STEAGALL].

Mr. STEAGALL. Mr. Speaker, I have seldom heard a more remarkable contention made to this House than that which is offered by gentlemen who favor the Senate amendment to this bill. They even register their protest when citizens of a State go into the courts of the land for the purpose of having their rights adjudicated and passed on. That, Mr. Speaker, is the sin which some national banks in New York and Massachusetts have committed. That is the offense which has brought down upon their heads and those of us who agree with them in their insistence upon their legal rights the condemnation we have heard here to-day.

Mr. GRAHAM of Illinois. Mr. Speaker, will the gentleman yield?

Mr. STEAGALL. I am sorry, but I can not yield now, because my time is limited.

When the national bank act was passed Congress passed a law granting to the States the right to tax capital invested in these institutions, which are creatures of the Federal Government. Congress deemed it wise to provide that the capital of citizens invested in national banks be protected against legislation by the States in levying discriminatory taxes. The statute provides that capital invested in national banks shall not be taxed at a higher rate than capital in the hands of individual citizens.

The Supreme Court in numerous decisions has upheld the law and has uniformly construed the language "capital in the hands of individual citizens" to mean such capital as is employed in competition with capital invested in national banks. It is manifest that it was the purpose of Congress to protect and encourage citizens in the investment of their money in the capital of national banks. In the absence of this protection afforded by the statutes it would be in the power of any State in the Union to drive national banks out of business by tax laws discriminating in favor of those coming in competition with national banks. The State of New York, for instance, passed a statute embodying the provisions of the act of Congress. The State for years had a tax of 1 per cent on the value of shares in all banks, national and State, and institutions and individuals having capital similarly employed. Finally, the Legislature of New York passed a law continuing the 1 per cent tax on shares of banks and placed an additional tax on income from the shares of banks. But this law provided for taxing investment in private or unincorporated banks on income alone and not over 3 per cent. This was clearly a discrimination in favor of moneyed capital in the hands of individual citizens employed in competition with national banks.

The State had no right to levy any income tax against the shares of national banks and had no right to tax such shares 1 per cent, while taxing private bankers on income alone and not over 3 per cent, which imposes a much less burden. The discrimination amounts to $6,000,000 or $7,000,000 in the city of New York alone which the national banks there have to pay in excess of what is paid by private bankers with the same amounts of investments. The Supreme Court of the State of New York held that the legislation embodying this discrimination was void on its face under the act of Congress which had been embodied in the statutes of the State of New York.

Now, what is it the Congress is asked to do? We are asked to go back and confer, retroactively, a power in the State of New York which it did not have at the time the taxes in controversy were levied and to make valid the discriminatory statute of New York, which the supreme court of that State pronounced void on its face, because there was no power whatever in the State to levy such taxes. That is what is attempted by the Senate validating section. Congress has no such power as that. Congress can not levy any tax in the State of New York. Such taxes are purely local and within the power of the State of New York, limited by the act of Congress protecting citizens in their investments in national banks against discriminatory legislation. Citizens acquired rights in connection with their investments, and those rights can not be taken away.

If we adopt the provisions of the Senate amendment we simply remand the whole controversy to the courts of the country, and the Supreme Court of the State of New York has decided already that these assessments made by the legislature of that State are void on their face. If we adopt the Senate amendment, the State of New York will have nothing but a lawsuit, which we contended there is no chance to win, and which means that they can not hope to retain the taxes collected from national banks under that discriminatory statute. What does the House validating provision do? The gentleman from Massachusetts [Mr. LUCE] says that this provision would force the States of New York and Massachusetts to return the millions of dollars that have been collected from national banks. That would not result if the House provision should prevail. We are trying to provide a method, and the only method, by which these States can retain this money, and that is to go back and comply with the law in existence when they attempted to levy those taxes. Under our amendment it is only necessary to go back and levy the same taxes against J. P. Morgan & Co., Kuhn, Loeb & Co., and other private bankers—against all capital employed in competition with capital invested by citizens in national banks—that are levied against the investments of citizens in such banks and make all abide by the same rule without discrimination.

When they do that they will be able to hold every dollar they have collected from national banks. It is only necessary that they go back and assess the private bankers and collect on the same basis the taxes which they are attempting to dodge and which they want Congress to back them up in dodging. This is the way, and the only way, by which these States can retain the money they have collected.

This Congress has passed a law for refunding taxes improperly collected by the Federal Government and has appropriated millions of dollars for the purpose of reimbursing people of the country who have paid taxes contrary to law. Gentlemen who voted for this legislation come forward to-day and solemnly ask us to attempt to enable States, where these controversies have arisen, to find a way by which to make valid their violations of the law passed by Congress and in existence when these taxes were levied and to hold money collected from national banks in taxes which they had no power to collect and which were

collected in violation of both State and Federal statutes. Even if we had the power, which we have not, nothing could be more unseemly than for the Congress, after having laid down the rules under which taxes may be levied against capital invested in national banks, to go back and attempt to sanction and validate the open and intentional violation of the solemn enactment of Congress supported and sustained by the Supreme Court of the United States for half a century.

They ask us to go back and say, notwithstanding they have violated the law, we are ready to back them up in it and authorize them to go as far as they like. We are about to reenact the statutes under which States may tax the capital of citizens invested in shares of national banks. We expect to provide for different methods of assessing such taxes. But, whether we pass the House bill or accept the Senate amendments, we shall still attempt to protect investments in national banks, in whatever taxing method is employed, against unfair and unjust discriminations in taxes to be levied by the States. But what is the use in enacting such statutes if we set the precedent of inviting their violation? How long before we shall expect gentlemen to come forward again, after such violations have been indulged in, and ask Congress again to back them up and say that we did not mean the enactments of Congress to be taken seriously—to go ahead without regard to congressional legislation—that we stand ready to validate such action.

Mr. LUCE. Mr. Speaker, will the gentleman yield?

Mr. STEAGALL. Yes.

Mr. LUCE. Does the gentleman approve of the validating clause in the House bill?

Mr. STEAGALL. I do.

Mr. LUCE. Then how does the gentleman hold himself together in this case?

Mr. STEAGALL. I approve the clause of the House bill because it simply authorizes the States to correct any error they have made only so long as they observe the solemn enactments of Congress in attempting to levy assessments. The courts have always held that it is permissible to go back and make a correction where there is a failure to exercise power or where it has been exercised improperly. But the courts have never held that legislation may confer retroactively authority that never existed or that Congress can confer upon the States the power to levy a tax retroactively which the States never had the power to levy in the first instance.

Mr. LUCE. But the House bill does change the law and makes it different from what it was at the time, I may say.

Mr. STEAGALL. I do not so understand the provisions of the House bill.

Mr. LUCE. Let me read it to the gentleman.

Mr. STEAGALL. I would rather not have my time taken up in reading the provisions of the House bill. There are some other things I wish to say before I conclude.

The SPEAKER pro tempore. The time of the gentleman from Alabama has expired.

Mr. STAFFORD. Mr. Speaker, it is indeed difficult for me to appreciate the position of those on the other side of the aisle who believe in State rights but who would deprive the States of their sovereign power in taxing the instrumentalities of the National Government doing business within their borders. That is the whole sum and substance of what this validating clause claims to do. True, under section 5219 as it originally was enacted it only applied to the taxes levied on shares as personal property, but the States have sought to supplement the personal-property tax with something more potential in developing revenue in the way of income taxes. As, for instance, New York, Massachusetts, Wisconsin, and other States where taxes on the bank's income have been levied. What we are attempting to do here as far as validating is concerned is only doing what the States have done time and time again under their taxation levies when they have ratified, approved, and corrected that which they found faulty. The National Government is seeking to delegate to the States the authority to tax national banks within their borders on the same plan as State banks. I say in all frankness we should accept the Senate amendment rather than the amendment proposed by the gentleman from Pennsylvania. And why? Let us read for a minute what it proposes to do. This would throw the whole subject as to the taxes that have been collected into the courts again. He says:

The provision of section 5219 of the Revised Statutes of the United States as heretofore enforced shall not prevent the legalizing, ratifying, or confirming by the States of any taxes heretofore paid, levied, or assessed upon the shares of national banks or the collecting thereon to the extent that such tax would be validated under said section.

That will not validate the present tax levies on national banks. We are attempting to validate them. This would merely throw this whole subject into the courts again. That is what you will do by this language. It does not follow the language of the House provision, but says that the provisions of section 5219 to the extent of such taxes would be under said section. You are not doing anything—you are doing unwittingly something you do not intend to do. Many a national bank in New York, Wisconsin, and other States have paid their taxes without protest, wanted to meet their own obligation to the States. There are many honest banks who wished to share their just burdens of taxation. Is it going to be said that this House is going to punish a bank that paid its tax assessment and relieve the banks that took advantage of technicalities and paid the tax under protest. That is what you are attempting by passing the proposed amendment. If you want to do what is right so as to give effect to the method of taxation in your State and permit it to tax national banks within its borders, you will adopt the amendment of the Senate.

Mr. McFADDEN. Mr. Speaker, I yield 15 minutes to the gentleman from South Carolina [Mr. STEVENSON].

Mr. STEVENSON. Mr. Speaker, it would be just as well for a minute to get a little perspective of the question that is before us. In December, 1862, which is going a good ways back, but we have got to look at this question from the foundation, you will remember that Salmon P. Chase, afterwards Chief Justice of the United States, then Secretary of the Treasury, submitted a message to the Congress asking that a national-banking system be established which would be based upon bonds of the United States Government. He stated that the many disasters that had overtaken the arms of the Union indicated that a long and uncertain war was before them, and it came out that the currency of the United States was bringing 53 cents in the markets of the world; that the 6 per cent bonds of the United States were bringing 68 cents of a currency that was bringing 53 cents, and you will see about where it was. Within eight days after that message was made Lee and Jackson struck Burnside at Fredericksburg and crushed the Army in a terrific defeat, one of the greatest ever suffered by the Union forces, and knocked at the very doors of the Capitol at Washington. There was no money with which to pay anything and the money issued was becoming absolutely worthless. In January there was a bill introduced by John Sherman to create national banks for two purposes, to provide a place where it would have a market for national bonds and provide for a currency that would be uniform all over the United States. It was opposed as bitterly as some State rights Members are opposing the House provisions here, but it became the law, and 60 years ago day before yesterday Lincoln signed it and national banks were established to help the Government in the greatest crisis that confronted it and I hope will ever confront it. You will note that the capital was all to be invested in tax-free bonds and that they were to come to the help of the Government.

You will be surprised when you think of it that they even thought of taxing them at all. Yet they did. They said, "We are going to allow the States to put a tax upon the holders of the stock, but we are going to say that it can not be at a higher rate than the States put upon the stocks of their own banks." The position of the gentleman from New York here to-day is that that is what they meant. Yes; that is what they meant. In 1864 they enacted that, and they put in this:

The tax so imposed under the laws of any State upon the shares of any association authorized by this act shall not exceed the rate imposed upon the shares in any bank organized under the authority of the State where such association is located.

The gentleman pleads that they were ignorant over in New York. They went to work and taxed them in that way, and the savings banks were in issue, and the bank whose capital was exempted because it was in State bonds was exempt; and in 1868 they passed the present law, in which they said the tax shall be levied the same as upon other competitive capital in the hands of individual citizens.

The gentleman says this was all a misapprehension. Everybody thought otherwise. In 1884, in the case of Boyer against Boyer, 113 U. S., in Pennsylvania, that very question was raised, and the Supreme Court said:

The effect, even the object, of the latter act—

That is, the act of 1868—

was to preclude the possibility of any such interpretation of the act of Congress as would justify States which are imposing the same taxation upon national-bank shares as the shares of State banks from discriminating against national-bank shares in favor of capital not invested in such bank stock.

That settled the question which Mr. MILLS says was not settled till the Richmond case.

In fact, the States did not discriminate and do not make any such discrimination now, and that was 40 years ago. Yet the gentleman from New York says that because a lawyer down in Richmond came into court and admitted that everything

stated in the evidence was true, and admitted himself, out of court—the gentleman says the court overturned all the decisions. That is merely a bogey.

The test in Massachusetts about which the gentleman from Massachusetts complains was begun and was going on before the Richmond decision—had been going on for two years. They passed a tax law there in which they put a very light tax on the private banker, a slight income tax, and a heavy one on the national-bank stockholder, because it is the stockholder, not the bank, who pays these taxes. The tax is levied upon him. They put a tax upon the private bank in the State of Massachusetts in 1918 which takes 6½ per cent of the income of the private banker and takes 30 per cent of the income of the man who holds stock in the national bank, on his income. That is what it does. Yet they come here and want you to ratify it.

The national banks served notice that they would not stand for it, and they filed their action long before the Richmond case was ever decided.

What does that amount to? I want to show you. I have here the financial statement of Boston. Boston's income is $52,000,000, and her comptroller shows that she has a surplus this year of $1,500,000, whether she gets this back tax or not. But what is it? The national banks in the State of Massachusetts under that iniquitous law pay $2,716,354. That is official. They paid this last year. If they had paid at the same rate as Lee, Higginson & Co. and other international bankers that were let off with an income tax, they would have paid only $484,000.

Yet they want us to put the approval of Congress on that. You have violated a law which has been thrown around this great financial institution—the great system of national banks—in this country, which is the foundation of the Federal reserve system. You can go and talk all you want to about it. How about New York?

Mr. J. M. NELSON. Mr. Speaker, will the gentleman allow me to interrupt him there?

Mr. STEVENSON. Yes.

Mr. J. M. NELSON. Will the House provision get the private banker?

Mr. STEVENSON. Yes; the House provision will get the private banker if the States will enforce it. They would turn them loose on the same plane as the national banks, but we did not propose that they shall be in competition with the national banks and that they shall exact from the national banks what they would be required to pay.

What is the situation in New York? They talk about New York being busted, too. They have only collected two years' taxes there—$6,000,000 a year, in round numbers, or $7,800,000, rather, to be exact. Now, what is the situation there? New York State collects $600,000,000, in round numbers, the whole State. The city of New York collects $300,000,000. Yet they say they will be busted if we do not let them take $12,000,000 out of these national banks unjustly.

Now, what happened? On $600,000,000 of national-bank stock in New York they collected in New York last year, first, 1 per cent, $6,000,000; second, 3 per cent on the income of every stockholder that they could catch, $1,800,000 more, and nobody up to this good hour has ever admitted or thought of claiming that they had the right to tax the income from the national banks. It was only to tax the stockholder on his stock. What did they tax the great international bankers at—such firms as J. P. Morgan & Co.? On the same amount of capital they taxed them $1,800,000. There is a discrimination of $6,000,000 against the national banks, and yet they come here and say, "You must let us keep it, because New York is poor"—or ignorant; I do not know which.

Mr. FESS. Mr. Speaker, will the gentleman yield to one question there?

Mr. STEVENSON. Yes.

Mr. FESS. This money has been illegally collected, has it not?

Mr. STEVENSON. Yes.

Mr. FESS. Upon what basis?

Mr. STEVENSON. Upon the basis of 1 per cent on the stock and 3 per cent on the income.

Mr. FESS. Was it unconstitutional?

Mr. STEVENSON. It was contrary to the statute of the United States, which does not allow legislatures to tax national banks at a higher rate than it does other competing capital.

Mr. FESS. And the claim is here that if we do not validate it will be inconvenient——

Mr. STEVENSON. To the State of New York.

Mr. FESS. And inconvenience is to have more effect than the principle of taxation?

Mr. STEVENSON. Yes.

Mr. FESS. That is something I can not get through my mind.

Mr. DALE. While they claim that, they do not claim it will be settled?

Mr. STEVENSON. No.

Mr. J. M. NELSON. Will the gentleman yield?

Mr. STEVENSON. Yes.

Mr J. M. NELSON. This is a question of the validation of taxes that have been illegally collected?

Mr. STEVENSON. Yes; Massachusetts, New York, and North Dakota are the three States that it affects. I will say that North Dakota has had a lot of advertising, but it is not any worse than Massachusetts and New York. She put 3 mills on private capital and 35 mills on the national-bank stock, and Boston 6 per cent on the income of one crowd and 30 on the other.

Mr. REED of West Virginia. Will the gentleman yield?

Mr. STEVENSON. Yes.

Mr. REED of West Virginia. Will the House provision permit the State to go back and correct the erroneous legislation?

Mr. STEVENSON. The House provision will permit the State to collect what they were legally entitled to by complying with the law. My position about that is this: There are the fellows that got off with 3 per cent on the income found to be in competition with the national banks. If we could go back and take from the national banks $12,000,000 that the court says is theirs by back taxes, we can go back and take from Morgan & Co. and his crowd $12,000,000. We say by our provision if you will go and put Morgan and that crowd on the same basis that you do the national banks, then that will be all right and everybody will be pleased and happy. But they do not want to do that.

Mr. MILLS. Will the gentleman yield?

Mr. STEVENSON. Yes.

Mr. MILLS. Do not you go further than that? You do not limit that to the private bankers but you tell the State of New York that you have got to tax the individual owner of a single bond on the same basis as the great banking corporations.

Mr. STEVENSON. The gentleman from New York gets his law entirely by extremes when he makes a statement. The gentleman has been in error in the whole business. He came in here some time ago—I was not present until he had finished—and he said that some smart lawyers from New York had come down here and bamboozled and misled the House Banking and Currency Committee and had gotten us to do something that was wrong.

Now, gentlemen, the crux of the whole thing is that the private bankers up there—and I have no unkind feelings for them; the gentleman is a member of the firm of Stetson, Jennings & Russell, personal lawyers for J. P. Morgan & Co.

Mr. MILLS. The gentleman from South Carolina is mistaken.

Mr. STEVENSON. What am I mistaken about?

Mr. MILLS. The gentleman says that I am a member of the firm of Stetson, Jennings & Russell.

Mr. STEVENSON. The gentleman's biography in the Congressional Directory says that he is a member of that firm, and that statement is my authority; there is where I got my facts.

Mr. MILLS. In answer to the gentleman I will say that I have not been a member of that firm since I became a Member of the House.

Mr. STEVENSON. Then the gentleman had better take his sign out of the biography. [Laughter and applause.]

I cite the New York City directory of partnerships showing the following constitution of that firm:

John W. Davis, Charles MacVeagh, Frank L. Polk, Edward R. Greene, Allen Wardwell, George H. Gardiner, Lansing P. Reed, Hall Park McCullough, William C. Cannon, OGDEN L. MILLS, J. Howland Auchincloss, Edwin S. S. Sunderland, Thomas Garrett, jr., and Lee McCanliss.

The New York court on the trial of these cases and on motion of the State's attorney made the following findings of fact, which shows that the private bankers held $1,200,000,000 capital in New York in competition with national banks untaxed at all:

XXIII.

During the year 1921 moneyed capital in New York City included capital used by private bankers, by bondholders, brokers who made a speciality of commercial paper, brokers who made a specialty of buying and selling bankers' acceptances; money loaned on demand in Wall Street and of stock exchange houses which have accounts of customers who are permitted to draw against them as deposit accounts, and investment houses, which moneyed capital, or part of it, was

employed in the same way as the capital of national banks; private bankers did a banking business and did everything that a national bank does except issue circulation, investment houses bought and sold securities, commercial paper brokers dealt in bankers' acceptances, individuals and also corporations made loans in competition with national banks in Wall Street against stock exchange collateral, investment houses underwrote and sold bonds and securities, and such moneyed capital came in competition with the capital of national banks in this city, the moneyed capital employed in these operations being in excess of $1,000,000,000, such amount comprising all the different classes and including investment companies. (S. M., pp. 44, 45, 48, 49, 55.)

XXIV.

During the year 1921 the operations of national banks consisted of receiving deposits, discounting commercial paper, making loans on collateral securities, and buying and selling corporate obligations such as bonds and notes and dealing in acceptances, dealing in negotiable securities issued by governments, such as Government bonds, municipal bonds, and State bonds; buying and selling foreign securities and issuing circulating notes as money; and with the exception of issuing circulating notes such operations were engaged in by individuals or moneyed corporations other than banks and trust companies in competition with national banks, the amount of capital invested in the business of private banking in this city being over $200,000,000, such private banking houses including J. P. Morgan & Co., Kuhn, Loeb & Co., Speyer & Co., J. & W. Seligman, Hallgarten & Co., Ladenburg, Thalman & Co., Goldman, Sachs & Co., and Blair & Co., generally, not invariably, composed of individuals doing business as partnerships and mostly partnerships. (S. M., pp. 58, 59, 60, 62, 63.)

HOW CAN WE VALIDATE THE TAX?

I.

State legislatures are limited by section 5219 in taxing national banks as rigidly as they are by their State constitutions, and can no more transcend the limits laid down by it than by their State constitutions. It is needless to cite many cases for this. I cite one:

1. No tax could be levied on the shares of national banks without consent of Congress. (N. Y. case, People *v.* Weaver, 100 U. S. 543, and cases cited.)

II.

An unconstitutional act or one taxing a national bank contrary to section 5219 is void for want of power to pass it, and can not be cured by any validating act. I cite many cases:

1. The legislature can under no circumstances validate an unconstitutional act. (Duke *v.* Williamsburg, 21 S. C. 414; State *v.* Whitesides, 30 S. C. 586.)

2. The legislature can not accomplish by a legalizing act what it could not do originally. (Cedar Rapids Water Co. *v.* Cedar Rapids, 118 Iowa 242.)

3. Cooley Const. Lim., sixth edition, page 469, says: "But the healing statutes must in all cases be confined to validating acts which the legislature might previously have authorized. It can not make good retrospectively acts or contracts which it has and could have no power to permit or sanction in advance." (See People *v.* Lynch, 51 Calif. 15; Billings *v.* Ditten, 15 Ill. 218; Conway *v.* Coble, 37 Ill. 82; Mfg. Co. *v.* Lathrop, 7 Conn. 550; Norris *v.* Donniphan, 4 Met. (Ky.) 386.)

4. A vested right of action is property in the same sense in which tangible things are property, and is equally protected against arbitrary interference. (Cooley, 6 ed., p. 443.)

5. "If, as we assume, the money so taken by the defendant illegally from the plaintiff was the money of the plaintiff in the hands of the defendant, which by the principles of the common law he had a *vested right* to recover, it was not competent for Congress by subsequent legislation to exclude the plaintiff from his right to apply to the superior court of his State for its recovery." Appealed to United States Supreme Court and reversed, but held that if action had been brought before the statute was passed it would be good. (Hubbard *v.* Brainard, 35 Conn. 576.)

6. The retroactive statute of Kentucky was held merely to give a remedy. It is stated thus: "As to local stockholders the act of March 21, 1900, * * * created no new right of taxation, but gave simply a new remedy, which by law is operative to embrace preexisting obligations." But the act imposes upon the bank a liability for taxes assessed upon its shareholders, whether within or without the State. This liability did not exist before "the passage of the act." Held void. (Covington *v.* First National Bank, 198 U. S. 111–114; *First National Bank of Covington v. City of Covington et al.*, 103 Fed. 523, at page 527) is the same case and was affirmed. The court said at page 527: "Any attempt to give it the appearance of being a curative statute is merely nominal and colorable, and can not be effective. *The previous legislation* had been void because it was opposed to section 5219, *Revised Statutes, and could not be cured*, though other new and different legislation might be enacted. Moreover, it imposes a tax upon national-bank shares alone, and the retroactive feature of section 3 is a manifest discrimination against national-bank shares, as there is no corresponding provision in any law of the State for the *retroactive taxation of moneyed capital* in the hands of State banks *or of individuals.*" (Italics ours.)

7. "The legislature has the power to pass healing acts which do not impair the obligations of contracts nor interfere with vested rights. * * * The rule in regard to curative statutes is that if the thing omitted or failed to be done and which constitutes the defect sought to be removed or made harmless, is something which the legislature might have dispensed with by a previous statute, it may do so by a subsequent one." (Southerland Statutory Cons. S. S. 675.) "The legislature can not validate what it could not have previously done. 'Acts which are jurisdictional and could not be dispensed with antecedently, by statute, can not be made immaterial by subsequent legislation. If such jurisdictional facts are wanting the proceeding is a nullity and can not be cured by any subsequent legislation, for no prior legislation could make it effectual.'" Thus, for example, in Lane *v.* Nelson (Pa. case), it is settled by current of authority that "the legislature by an arbitrary edict can not take the property of one man and give it to another; and that when it has been attempted to be taken by a judicial proceeding, as a sheriff's sale, which is void for want of jurisdiction, it is not in the power of the legislature to infuse life into that which is dead." (Ibid. 676.)

8. The New York court, in 129 N. Y., p. 312, say of an attempt to validate a tax void for jurisdictional reasons: "The theory of the act seems to have been that an unconstitutional law can be validated by simply repealing it, and the vice of an assessment without a hearing is no more than some formal omissions, which may be excused because it was not originally essential. * * * His (the taxpayer's) right is to pay no more than his just proportion, and the legislature can not arbitrarily determine the amount. * * * Both the validating acts are open to this objection. While they were sufficient to cure defects of one character, they were not capable of infusing life into a law which the legislature had no power to make." (Matter of Trustees of Union College, 129 N. Y. 312–13.)

9. "To ratify in form an unconstitutional act and then by retrospective legislation cut off all power of resistance, is a measure neither tolerable nor possible." (Ibid.)

10. In Exchange Bank *v.* Purdy (196 N. Y. 284), the rule is stated thus, referring to curative tax statutes: "Such legislation is valid provided the original taxing act was valid and the omission sought to be remedied is not jurisdictional but an irregularity." They held that the act there was a valid curative act, that the infirmity was an irregularity, but because they tried to cut off recovery in suits brought, as is the case here, they say: "This would indorse and perpetuate the original evil * * * which the legislature had no power to do, either directly by legalizing the assessments without a further proceeding, or indirectly by depriving the constitutional courts of jurisdiction in matters then pending before them."

11. In Williams *v.* Supervisors (122 U. S. 154), the court says: "Where the directions upon the subject might originally have been dispensed with, or executed at another time, irregularities arising from neglect to follow them may be remedied by the legislature." In the same case in the Circuit Court, 21 Fed. 99, Judge Wallace said: "The general rule has often been declared that the legislature may validate retrospectively any proceeding which they might have authorized in advance."

III.

Massachusetts General Laws, chapter 59, section 82: Illegal assessment valid except as to illegal excess.

When the words "other moneyed capital" are supplemented by the words "coming into competition with the business of national banks" there is no more difficulty in applying it than there is in construing the words engaged in the business of banking, and it has the advantage of 54 years of construction which has met every angle of contention.

I cite as follows:

1. When tax was levied by the State on the capital of State banks (which if invested in United States bonds was exempt from taxation) they could not levy tax on shares of national banks; hence the change to "other moneyed capital in the hands of individuals." (N. Y. case, Van Allen *v.* Assessors, 3 Wall. 459; Ill. case, Bradley *v.* People, 4 Wall. 459.)

2. "In permitting the States to tax these share it was foreseen—the cases we have cited from our former decisions showed too clearly that the State authorities might be disposed to tax the capital invested in these banks aggressively. But Congress said * * * you may tax the real estate of the banks as other real estate is taxed and you may tax the shares in the bank * * * to the same extent as other moneyed capital invested in your State." (People *v.* Weaver, 100 U. S. 544.)

3. "It was conceived that by this qualification of the power of taxation equality would be secured and injustice prevented." (Ibid. 544.)

4. "The term 'equal rate' embraces 'valuation,' 'assessment,' and rate of assessment, and when other owners of moneyed capital are allowed to deduct their debts from their credits and pay tax on the balance the national bank stockholder is given the same right." (People *v.* Weaver, ibid. 545; (Indiana) Bank *v.* Britton, 105 U. S. 303.)

5. "The term 'moneyed capital' embraces capital employed in national banks and capital employed by individuals when the object of their business is the making of profit by the use of their moneyed capital as money, * * * money used with a view of compensation for the use of money." (Montana case, Tallbot *v.* Silver Bow Co., where stocks were exempt, 139 U. S. 448; Mercantile Bank *v.* N. Y., 121 U. S. 138; Palmer *v.* McMahon, 133 U. S. 660.)

6. A difference in mode of levying the tax does not invalidate the tax if the load is the same. (Coreyton *v.* National Bank, 198 U. S. 100.)

7. That section 5219 was intended to "render it impossible for the State in levying such a tax *to create and foster* an unequal and unfriendly competition by favoring institutions or individuals carrying on a similar business and operations and investments of a like character. * * * The business of banking, as defined by law and custom, consists in the issue of notes payable on demand intended to circulate as money where the banks are banks of issue; in receiving deposits payable on demand; in discounting commercial paper; making loans of money on collateral security; buying and selling bills of exchange; negotiating loans, and dealing in negotiable securities issued by the Government, State and National, and municipal and other corporations." These are the operations in which the capital invested in national banks are employed, and it is the nature of that employment which constitutes it in the eye of the law "moneyed capital." (Aberdeen Bank *v.* Chehalis Co., 166 U. S. 458; see also pp. 460 and 461, where railroad corporations, insurance companies, etc., are differentiated.)

8. Boyer *v.* Boyer (113 U. S.) holds that the moneyed capital exempted must be of a material part relatively; "credits are by no means synonymous with moneyed capital." (Bank *v.* Wellington, 173 U. S. 218.)

9. Also that the bank must prove by evidence that the capital exempted was moneyed capital competing with national banks. (See also Bank *v.* Chambers, 182 U. S. 560.)

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[From the Evening Mail.]

SENATORS DOUBT OWN PLAN TO VALIDATE NEW YORK BANK TAX—CITY HAS $18,000,000 AT STAKE IN MEASURE PASSED BY BOTH HOUSES AND NOW IN CONGRESS—WOULD MAKE LAW RETROACTIVE—MAY GO TO COURTS.

(By Henry Hazlitt, staff correspondent of the Evening Mail.)

WASHINGTON.—Can Congress validate retroactively a tax levied under State law when the tax was unconstitutional under national law at the time of its imposition? The city of New York appears to believe it can.

The House of Representatives and the United States Senate have each passed separate resolutions designed to remove any Federal obstacles, and declaring the act of a State to legalize such a tax or to retain the funds collected under such a tax is not inimical to the interests of the Federal Government.

If New York City is right, then the city will retain $12,000,000 and be able to collect about $6,000,000 additional, making a total of $18,000,000.

But if New York City is not right then the present compliance of Congress will not help the city. On the contrary, for every day that the repayment of these taxes is postponed the city of New York is now losing nearly $2,000, or an annual rate of 6 per cent, or $720,000 a year more, just for the purpose of carrying on a futile litigation.

FRIENDS ARE FEARFUL.

And it is the opinion even of many of those who voted in Congress in favor of this resolution to validate these back taxes that the action of Congress will not do the slightest good in enabling the city of New York and many other cities in New York and other States to retain the taxes collected under the law held to be unconstitutional by the Court of Appeals in the State of New York.

The tax referred to is that on national bank stock. Both the Senate and the House having passed separate validating resolutions, the question is now before the conference committee, which is expected to report some day this week.

The case is complex and difficult to understand without a knowledge of its history. In 1819—going back with a vengeance—the Supreme Court decided that a State could not tax a national bank because that was a Federal agency. In 1863, however, the national bank act was passed and in the following year Congress gave the individual States permission to tax national bank shares as the personal property of the owner. There was one limit put upon this permission. National bank shares were not to be taxed at a higher rate than other personal property.

VALUATIONS ARE HIGH.

This was held to in theory, but in practice bank shares bore a very heavy burden. The value of the bank stock was arrived at by adding capital, surplus, and undivided profits, and therefore the holder paid on the full book value, but real estate in some States and counties was appraised at only one-fifth of its real market value. The general property tax was easily escaped—except that on bank stock, which was too easily traced.

In some States and sections holders of bank stocks were paying 60 per cent of the whole personal property tax. In other cases, while real estate was appraised at a low figure, it was taxed at a high rate and bank shares in some instances paid as high as 7 per cent a year on their capital value. Finally, largely at the request and with the cooperation of the banks, the New York State Legislature in 1901 limited the rate on bank stock to 1 per cent a year.

In 1919, however, came along the State income tax. This tax took the place of the old personal property tax, and the State legislature thereupon exempted from further tax "intangible personal property" except bank shares.

NEW YORK BANKS PROTEST.

It was then that the national banks of New York protested the tax on bank shares, on the ground that, contrary to Federal statute, national bank shares were being taxed "at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State."

It was pointed out that "moneyed capital in the hands of individual citizens" included money invested in private banking houses, such as J. P. Morgan & Co., Kuhn, Loeb & Co., and others, and that in the city of New York in 1921 competing capital was nearly twice the total capital of the State and national banks.

The court of appeals, the highest judicial body in the State, upheld the protest of the national banks. That court not only held the tax unconstitutional because it went beyond the powers conferred by Congress, but because it ran contrary to the State law itself, which also provided that the tax on bank shares should not be at a "greater rate than is made or assessed upon other moneyed capital in the hands of individual citizens of this State."

TAX ORDERED RETURNED.

As a result of this decision the municipalities of New York which had been receiving the tax, amounting to about $7,000,000 a year in the State of New York, of which $6,000,000 went to New York City, were ordered to return the taxes that they had collected for two years, with interest at 6 per cent. They were also unable to collect the tax for 1922 of about $6,000,000 more. So the decision made a difference to New York City of $18,000,000.

The State legislature repealed the provision in the State law which stood in the way of bank stock taxation, but the result is now that State banks in New York are paying a tax of 1 per cent on their shares and trust companies are paying a franchise tax of an equivalent amount, but national banks are not taxed nor are private banks. The State banks, however, hold that the tax on their shares prior to the repeal of this protecting clause in 1922 was illegal, and are protesting in the courts the tax paid from the inauguration of the State income tax until that time.

STATE HAS REMEDY.

Of course, if the State of New York taxes private banking capital at the same rate as national-bank capital, it can constitutionally proceed again to tax the national banks. But it is doubtful whether it will ever be able to retain the taxes collected during the years when the tax was illegal, no matter what action Congress should now take.

The debate in the Senate illumines this point. When Senator CALDER, of New York, introduced his "validating" amendment, Senator FLETCHER, of Florida, asserted that it should be made clear that all that Congress could possibly accomplish by the act was to say to New York and other States: "If you can find a way to validate your legislation, the Federal Government will make no objection to your doing so."

Senator CALDER replied, "That is all we propose to do."

Senator PEPPER, of Pennsylvania, remarked during the debate on the amendment that "the purpose of the declaration, if made, is merely to enable the question of validation to be raised in the several States. Some members of the committee, including the Senator from Virginia [Mr. GLASS] and myself, do entertain the opinion that when that question is finally decided it will be decided against the validity of the State act."

SENATOR SMOOT'S VIEW.

Finally Senator SMOOT, of Utah, remarked "I think if the validating amendment shall be adopted and the State of New York shall then undertake to pass a validating act that, of course, it will be fought in the courts. The question will then be decided upon the act of the Legislature of the State of New York; and it is my opinion, when the question comes before the Supreme Court, that the court will hold unconstitutional any act of the State legislature to validate the tax collected.

"That is what I believe as much as I believe that I live, although I am willing to vote to postpone the date of the final decision. If, however, I were an official of New York or Boston I would anticipate the payment of the amount of money received by taxation by this legislation."

If the opinion of these Senators—every one of whom voted for the so-called validating amendment—is correct, then all that is being accomplished in Congress is to postpone another decision against the State of New York, and all that the city is accomplishing by holding back the taxes and prolonging the litigation is to pile up interest against itself at a rate of $720,000 a year—which could pay the annual salaries of 48 New York mayors.

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[From the New York World.]

THE BANK TAX REFUND.

Representative MILLS declares that the conflict of laws between 22 States and the United States regarding the taxation of national banks is "little short of scandalous." It is easier to agree than to say what should be done about it. Mr. MILLS thinks that the accumulating loss of $7,000,000 bank taxes a year, to a total already exceeding $20,000,000 for New York alone, suffices to argue that Congress should "grant us authority to continue our method of taxing national banks." Otherwise the New York City tax rate must rise five points. But much more than the taxation of national banks is involved. New York courts have decided that the taxation which Representative MILLS seems to wish to preserve is double, discriminating, and obnoxious to the right of the United States to protect Federal banks against it. The House passed a bill enacting that the States could retain the taxes thus unlawfully collected, but the Senate entirely discarded it and substituted a bill of its own.

The States simply drifted into a conflict with Federal law. The necessity for the reform of State taxation became greater as taxes increased. Federal taxation had been so slight that inattention to it was natural, even if without excuse. Now the attention of New York is drawn to the matter by what may be called a fine for the error of its lawmakers. The real trouble is not the refund of the unlawful taxes but the lack of comity in taxation among the respective States, as well as between them and the Federal Government. All concerned should give more heed to what all are doing. Doubtless there is no intentional savagery in current tax laws or the administration of them, but the effect is much the same as if there were. Within the past few days the Converse estate paid to Connecticut $997,396, said to be the largest tax ever collected in that State. The Federal tax was $5,887,159. The New York tax, $356,874. There were other taxes in other States. If others of the family should die soon, the reduplication of taxes would sadly waste the property. Only the other day the courts ordered return to the Sage estate of $419,370 Federal taxes unlawfully collected.

The old doctrine that tax laws should be construed in favor of the taxpayer has been superseded by presumptions against him. These are questions underlying the dispute whether bank taxes should be refunded. The Senate bank tax bill is an improvement on that of the House, the refund question apart, but it retains the phrase "moneyed capital," the definition of which caused most of the trouble.

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[From the New York Evening Post.]

ASKS $78,655,000 FOR TAX REFUNDS—BUDGET BUREAU REQUESTS APPROPRIATIONS FOR REPAYMENTS—INCREASING RECEIPTS FROM BACK TAX COLLECTIONS STILL EXPECTED TO OVERCOME TREASURY DEFICIT.

WASHINGTON, February 16.—An additional appropriation of $78,655,000 to cover repayments on taxes illegally collected was asked of Congress to-day by the Budget Bureau. The item includes $54,000,000, which it is estimated will be required to meet tax-refund requirements between July 1 and December 31.

While only approximately $25,000,000 is to be used in the tax refunds between now and June 30, the Treasury deficit of $92,000,000 for the current fiscal year is thereby increased to $117,000,000. General Lord, the Budget Director, called attention, however, to the increasing receipts in back tax collections and reiterated that the President's hope of balancing the Budget this year still appeared likely to be fulfilled.

Back tax collections have amounted to about $8,000,000 a month since the drive began on July 1, at which time Commissioner Blair, of the Internal Revenue Bureau, estimated receipts from that source would average $25,000,000 a month. The extra refunds therefore do not appear serious in the view of Treasury officials, who say that, instead of an average of $2 collected in back taxes to $1 paid out in refunds, the ratio for the current fiscal year will be nearly 3 to 1.

The estimate submitted to-day, if granted by Congress, will make appropriations for tax refunds of nearly $150,000,000 during the current fiscal year. The total amount repaid from June 30 last to June 30, 1923, however, will be less than $100,000,000.

These figures are subject to change, owing to the possibility of court decisions which may affect the application or interpretation of the tax laws.

The drive by the Internal Revenue Bureau on back taxes includes the taxes paid in 1918 for the year 1917; and the many changes in the tax laws since then, as well as the unsettled state of the tax-law interpretations immediately after the war, make it possible, according to Treasury officials, that more refunds may be necessary.

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[From the New York Times, Friday, February 23, 1923.]

TAXES UNLAWFULLY COLLECTED.

The city charter requires the controller to certify to the aldermen one week before March 1 the funds available for meeting the budget demands, so as to enable the aldermen to fix the tax rate. But the budget was made up in expectation of receiving from the State some five millions of taxes levied upon national banks. That tax has been declared unlawful by the State's highest court for reasons leaving hardly a hope that the situation regarding these past taxes can be altered by any power in any way. The controller was right in securing legislative authority substituting June 15 for March 1 for the figuring of the tax rate.

Even the enactment of a relief bill would not be final. Congress could only validate such taxes as Congress could levy. It can not validate a State tax which the States lacked power to levy. In the future national banks may be taxed in conformity with Federal laws, but as to the past the right to tax must be controlled by the laws as they stood at the time. To confer retroactively original power to tax for the sake of validating taxes which have been enacted unconstitutionally but collected and spent would be to enact chaos.

There is now pending a bill appropriating $78,675,000 to enable the Treasury to repay Federal taxes unlawfully collected. Every investor in national-bank shares had a right to assume that he would be taxed by the States only in accordance with Federal laws as they were. In New York and some other States they were taxed more. Now it is proposed to validate those taxes, although Congress simultaneously prefers to pay back unlawful taxes rather than proceed in the New York manner. If Congress passes a validating bill, it is sure to be litigated and to put the matter in suspense pending the final judgment of the Supreme Court. New York's taxes this year can not be fixed with the inclusion of such an item. Controller Craig pleads the inconveniences of the situation, and his situation certainly invites sympathy. He is not to blame for what others have bungled. Our lawmakers deal with millions with less care than they disburse a $10 bill. The muddle caused in the city budget should be a sharp reminder that taxes are paid with real money.

The SPEAKER pro tempore. The time of the gentleman from South Carolina has expired.

Mr. STAFFORD. Mr. Speaker, there are only about half the Members present, and I think we ought to have a quorum to listen to the closing debate on this important matter. I make the point of order that no quorum is present.

The SPEAKER pro tempore. Evidently there is no quorum present.

Mr. McFADDEN. Mr. Speaker, I move a call of the House.

The motion was agreed to.

The Clerk called the roll, and the following Members failed to answer to their names:

Abernethy	Drane	Kirkpatrick	Rodenberg
Ansorge	Dyer	Kitchin	Rogers
Atkeson	Edmonds	Kleczka	Rose
Beedy	Ellis	Knight	Rosenbloom
Benham	Faust	Kraus	Rossdale
Bird	Fish	Kreider	Rucker
Bowers	Focht	Kunz	Ryan
Brand	Freeman	Lampert	Sabath
Brennan	Garner	Langley	Schall
Britten	Gould	Larson, Minn.	Scott, Mich.
Brooks, Ill.	Greene, Vt.	Lee, Ga.	Scott, Tenn.
Brooks, Pa.	Hawes	Lee, N. Y.	Sisson
Browne, Wis.	Hayden	Little	Slemp
Burke	Hicks	Luhring	Smith, Mich.
Burtness	Himes	McClintic	Sproul
Cantrill	Huck	Michaelson	Stiness
Chandler, N. Y.	Hukriede	Moore, Ill.	Stoll
Chandler, Okla.	Hull	Morin	Taylor, Ark.
Clark, Fla.	Hutchinson	Mudd	Thomas
Classon	Jacoway	O'Brien	Treadway
Clouse	James	Olpp	Ward, N. C.
Codd	Johnson, Miss.	Overstreet	Webster
Connally, Tex.	Johnson, S. Dak.	Park, Ga.	Wheeler
Connolly, Pa.	Jones, Pa.	Patterson, Mo.	White, Me.
Cooper, Ohio	Jones, Tex.	Patterson, N. J.	Williams, Tex.
Copley	Kahn	Perkins	Winslow
Crago	Keller	Petersen	Wood, Ind.
Crowther	Kendall	Porter	Woods, Va.
Cullen	Kennedy	Reber	Woodyard
Davis, Minn.	Kindred	Riddick	Young
Dempsey	King	Robertson	Zihlman

The SPEAKER pro tempore. Three hundred and three gentlemen have answered to their names, a quorum.

Mr. McFADDEN. Mr. Speaker, I move to dispense with further proceedings under the call.

The motion was agreed to.

The doors were opened.

Mr. LUCE. Mr. Speaker, I yield three minutes to the gentleman from Minnesota [Mr. NEWTON].

Mr. NEWTON of Minnesota. Mr. Speaker, one might judge from some of the debate that has proceeded that this is a measure peculiarly of interest to the States of New York and Massachusetts. Such, however, is not the case, because there are something like 15 or 18 States that are vitally interested in the passage of some kind of remedial legislation. In my own State legal contests have already been commenced by some banks while some others are paying under protest.

Mr. STEVENSON. Mr. Speaker, will the gentleman yield?

Mr. NEWTON of Minnesota. I have only three minutes.

Mr. STEVENSON. This debate is only as to the validation proposition. No other State is in any trouble except New York and Massachusetts on that.

Mr. NEWTON of Minnesota. The gentleman is mistaken. In my own State suits have already been brought to avoid the payment of taxes that have been levied under the law as it was being interpreted until the Richmond decision. We are interested, therefore, in the passage of some kind of validating legislation. The proposition is this: Are the States to be compelled to refund the millions collected and to be denied the privilege of collecting from those who now refuse to pay the same rate as the State banks? Congress is asked only to consent to legislation wherein the States may, if they choose, validate. Which proposition shall we adopt? For myself I am going to follow the advice of the State tax commissioner of my own State. He has consulted the commissioners from these other States. I state upon his authority that this House provision as to validation is not worth the paper it is written on. This view is confirmed by Senators KELLOGG and PEPPER, as I understand it. They say that with the Senate provisions at least something can be accomplished. What is there that has been urged against it? It has been urged that Congress has no right, nor has any legislative body the right, to go back and validate a tax. As was said by the gentleman from New York a few minutes ago, the Heintzen case clearly established the right to ratify and validate an illegal tax.

The case of the United States against Heinszen will be found in 206 U. S. 370. The principle therein set forth was followed in the more recent case of Rufferty against Smith-Bell Co., decided December 6, 1921. In the Heinszen case the Army administration of the Philippines had exacted certain duties on merchandise. The duties were levied, not by virtue of a legislative act but by an Executive order by the President. At the time the duty was levied Congress had passed no tariff law pertaining to the Philippine Islands. The duty was held to have been illegally collected in the first instance. Later Congress attempted to validate the collection of these illegal duties by an act passed in 1906, which will be found in Thirty-fourth Statutes at Large, page 636. The court held that Congress had the undoubted right to pass the legislation in the first instance. They then held that having had that power in the first instance, they also had the power to go back and ratify or confirm the action that was then illegally taken.

Another case in point is Mattingly against District of Columbia, 97 U. S. 687. This case concerned the validity of an act of Congress wherein Congress ratified certain assessments for street improvement in the District which had been held void. In sustaining the power of Congress to ratify these illegal taxes, the court said:

> If Congress or the legislative assembly had power to commit to the board the duty of making the improvements and the power to prescribe that the assessments should be made in the manner in which they were made, it had power to ratify the acts which it might have authorized. * * * Under the Constitution, Congress had power to exercise exclusive legislation in all cases whatsoever over the District and this includes the power of taxation. * * * It may, therefore, cure irregularities and confirm proceedings which without confirmation would be void because unauthorized, provided such confirmation does not interfere with intervening rights.

There seems to be an opinion somewhat prevalent in the House that Congress has the right to ratify except as to those cases that are already in litigation. Certainly the bringing of a lawsuit does not vest in any party any right to a particular decision. His right to recover must be determined on the law as it stands, not when the suit was brought, but when the judgment is rendered.

Cooley on Taxation, third edition, 517, in reference to validating previous illegal tax levies, says:

> The general rule has often been declared that the legislature may validate retrospectively the proceedings which they might have authorized in advance.

An interesting case is the Exchange Bank tax cases originally reported in 21 Fed. 99, where the court said:

> And it is immaterial that such legislation may operate to divest an individual of a right of action existing in his favor or subject him to a liability which did not exist originally. In a large class of cases this is the paramount object of such legislation.

This case was carried to the United States Supreme Court, where it will be found in One hundred and twenty-second United States, page 163. In confirming the lower court, the court held:

> The plaintiff and the other shareholders were bound as owners of property to bear their just proportion of the public burden * * * and it would seem but just that the defect should be cured if practicable and the shareholders not be allowed to escape taxation and thus entail the burden they should bear upon other taxpayers of the community.

In brief, this is the proposition: The provisions in the House bill merely reenact the existing law as that law has been considered by the Supreme Court in the Richmond Bank case. As a matter of fact, the enactment of the House provision means absolutely nothing. If the Supreme Court, upon further consideration of the whole proposition, should reverse the position taken in the Richmond Bank case we would not require any legislation for validating purposes. If the Supreme Court should adhere to the doctrine in the Richmond Bank case, the mere restatement of that by statute would not add anything to the law.

I believe in equality of taxation. Instances have been brought to my attention in a number of States of payments being made or about to be made by national banks who seek to escape their fair share of taxation by asserting the doctrine as set forth in the Richmond Bank case. If you adopt the House provisions you do just exactly what these bankers want you to do. They are not all this way. The largest bank in our State favors a change in the law.

Now, let us look at the Senate provision. The effect is to remove any objection on the part of the Federal Government to any State which legalizes or confirms a tax that had been here-

tofore levied against any national bank, providing that it was not greater than the tax imposed for the same period upon State banks or trust companies. It puts the national banks upon the same level as the State banks, and that to me is just exactly where they should be. While they are Federal agencies, they are only so in an incidental way for principally they are local banking institutions that compete for business in the same locality as the other banks whose charters are granted by State authorities. I hope that the House will vote down the proposition of the gentleman from Pennsylvania [Mr. MCFADDEN] and vote to concur in the Senate amendment.

The SPEAKER pro tempore. The time of the gentleman from Minnesota has expired.

Mr. MCFADDEN. Mr. Speaker, I yield 15 minutes to the gentleman from Arkansas [Mr. WINGO].

Mr. WINGO. Mr. Speaker, the proposition that is presented by the pending motion does not involve the main feature of the bill. It involves simply paragraph 5 of the Senate amendment, which is the so-called validating amendment. You are called upon to vote either for paragraph 5 of the Senate amendment, which the gentleman from Massachusetts [Mr. LUCE] urges you to vote for, or to vote for the motion of the gentleman from Pennsylvania [Mr. MCFADDEN] to concur in that with an amendment which is represented by the provision of the House conferees. What is the difference between the two proposals? That is what I suppose the House wants to know.

As the bill passed the House the so-called validating provision was contained in paragraph 3 of the bill. While the wording was different, the meaning of paragraph 3 as it passed the House was the same as contained in the language of the motion of the gentleman from Pennsylvania, which provides for striking out the text of paragraph 5 of the Senate amendment and substituting the following language:

That the provisions of section 5219 of the Revised Statutes of the United States as heretofore in force shall not prevent the legalizing, ratifying, or confirming by the States of any tax heretofore paid, levied, or assessed upon the shares of national banks, or the collecting thereof, to the extent that such tax would be valid under said section.

In other words, the pending motion is to substitute the language just read for paragraph 5 of the Senate amendment, which reads as follows:

That the act of a State legalizing, ratifying, or confirming a tax heretofore levied or assessed upon shares of national associations, or providing for the retention by said State of any of the tax heretofore paid, shall not be deemed hostile to, or inimical to the interests of, the United States or any agency thereof: *Provided*, That the amount retained, or to be retained, by such State is not in any case greater than the tax imposed for the same period upon banks, banking associations, or trust companies doing a banking business, incorporated by or under the laws of such State, or upon the moneyed capital or shares thereof.

Now, what is the difference? In order to understand the difference you must first understand what the situation is and what is the end sought to be reached by the so-called validating provision. The Court of Appeals of the State of New York, by unanimous decision, has declared the assessment under which certain amounts of taxes have been collected on the shares of stock of national banks in New York to be absolutely void, and under the law the entire amount is to be refunded to the taxpayers. The decision of the court was based upon its findings that these shares of national banks had been taxed at a higher rate than other moneyed capital in the hands of individual citizens of the State of New York coming into competition with the business of national banks, the court citing as an illustration the moneyed capital employed by the individual members of the private banking firms of J. P. Morgan & Co. and Kuhn, Loeb & Co. It is admitted by all that in fairness the State of New York and the different cities and towns that have received this tax money should not be required to refund all of it and the banks thereby escape all taxation.

The House will remember that when this bill passed the House all of us expressed grave doubts whether the Congress had any constitutional power to grant any relief by use of validating authority to the State of New York. Practically all lawyers who have studied the question admit that whatever power exists the State already has, but it was thought wise, in order to meet the technical plea that Congress had only granted permission to tax these shares at the time of the regular general assessment and not by back tax laws that we include in the bill the provision in question. Now, under the proposal of the House the State of New York, through its legislature, may do either of two things. It may pass a back-tax statute retaining of the tax funds referred to and ordered refunded by the court an amount equal to what would have been collected had the State made a lawful assessment in the beginning; that is, at a rate no higher than the rate imposed upon the other moneyed capital referred to. Or it may retain all of the money, if it will pass a back-tax statute which will cover not only the moneyed capital invested in the shares of national banks but also the moneyed capital in the hands of the individuals invested in the business of the private banking and partnerships of the State of New York.

Under the Senate provision Congress attempts to authorize the Legislature of the State of New York to pass a law overriding the decision of the court by retaining all of the money ordered to be refunded or retain any part of it. The legal effect of the proviso in the Senate proposal is the same as that of the first three lines in the Senate proposal because the Senate proviso appears to have been deliberately drawn so as to exclude the private bankers from its provisions.

In other words, the House provision says to the State of New York, "You may keep all of this tax money which you have been ordered to refund provided you back tax the competitive capital invested in private banking and bring it up to the level of what you have collected on the shares of stock of national and State incorporated banks. Or, if you are not willing to make the moneyed capital invested in private banking bear the same burden, then you may retain only that part which will equal in amount the taxes that you have collected from the moneyed capital invested in private banking." Upon the other hand, the Senate proposal boldly says to the State of New York:

"To hell with your courts; you need the money, so keep it all, even though you have unlawfully collected it."

Some gentlemen speak about being unfair and some demagogues in New York who are either ignorant of the facts or else are devoted to the private bankers complain that the House has either been misled or is unfair. Mr. Speaker, the unfairness lies in the law of the State of New York which taxes the moneyed capital invested in the State and the national banks in a greater sum, even including the income tax and all other burdens, from three to four times what it taxes the moneyed capital invested in private banking. Do I say that? No; that is the solemn unanimous decision of the Court of Appeals of the great State of New York and the findings of the joint tax committee of the Legislature of New York appointed to investigate the question.

The relief from this vicious taxing system, from this favoritism of the private banker, lies not in Congress but in the legislature of that great State. Let its citizens and its public officials instead of misrepresenting Congress go to Albany and insist that the tax laws of the State shall be rewritten so that the tax burden shall fall equally upon the private banker and the State and national banker. Let them so amend the law that no longer will the small State and National banks in up-State New York have all of their earnings and more paid to the taxgatherer, while the moneyed capital employed in the great private banking concerns of Morgan & Co. and Kuhn, Loeb & Co. pay a mere bagatelle in comparison.

Now, gentlemen of the House, that frankly is the position of your conferees. The proposition which we submit to you is one of equality of treatment as against the Senate provision, which boldly shields the private banker and confirms him in his special privilege.

LA FOLLETTE and OWEN and others advocate an amendment to the Constitution which will permit the legislative bodies to override and veto the decision of the courts, but the Senate by its proposal does not await the adoption of such an amendment to the Constitution but it boldly commits Congress to the theory of legislative veto of judicial decision. Gentlemen of the House, if you vote for this provision of the Senate authorizing the Legislature of New York to override the decision of its court on a tax question, then what are you going to do when it is proposed in this House to have Congress by a resolution override the decision of the Supreme Court in matters of Federal taxation? To be consistent the Senate ought to send over to the House a resolution overriding the decision of the Supreme Court in the stock-dividend case. That would be consistency upon its part. [Applause.]

Mr. LUCE. Mr. Speaker, I yield three minutes to the gentleman from South Dakota [Mr. WILLIAMSON].

The SPEAKER pro tempore. The gentleman from South Dakota is recognized for three minutes.

Mr. WILLIAMSON. Mr. Speaker and gentlemen of the House, I want to call the attention of the House to a situation which exists in most of our mid-western States. According to the definition of "moneyed capital" given by the Supreme Court of the United States in the Richmond case (256 U. S. 635) it includes not only moneys invested in private banking, properly so called, but investments of individuals in securities that represent money at interest and other evidences of in-

debtedness such as normally enter into the business of banking. Moneyed capital is also defined in the same decision as rights, credits, and demands upon which interest is received in the hands of private individuals. In other words, as here interpreted, it means moneys used for investment or loaning purposes, though it can in no sense be said to be used in banking operations. As a matter of fact, such investments are not in competition with the business of national banks in any proper sense of that term.

Now, the whole difficulty with the bill as it passed the House is that it only permits the State taxing power to tax national banks at the same rate and in the same proportion as the State taxes moneyed capital in the hands of individuals. In most of our States we have a lower tax on farm mortgages and other evidences of indebtedness owned by private individuals than we have on bank stock and other personal property. With the law as it now stands, carrying as it does the definition of "moneyed capital" as given by the Supreme Court, no State can tax the national banks on the same basis as it does State banks, but only at the same rate as it taxes money in the hands of private individuals. The House bill, in my judgment, in no way changes existing law, but is simply a declaration of the law as laid down in Merchants National Bank against Richmond.

There is no good reason that I know of why national banks should not be taxed at the same rate as State banks. If New York has some vice in her law that permits private banks or bankers to escape, let her correct that law.

We have private banks and State banks in my State and we tax private bankers and State banks upon exactly the same basis. There has never been any discrimination against national banks. As long as private, State, and national banks are treated precisely alike there can be no just cause for complaint. I am firmly convinced that the Senate amendment ought to carry in this House. [Applause.]

The constitutionality of the Senate amendment has been challenged. I do not think this challenge is well grounded. It is a principle of law of all but universal application that what a legislative body may do in the first instance may be later validated by that body. The Congress had the undoubted right to permit the States to tax national banks on the same basis as such States tax its own banks. For more than 50 years the States have taxed national banks at the same ratio as State banks in the belief that this was fully warranted under our Federal statutes. That the several States have acted in the best of faith and without discrimination, except in exceptional cases, can not be doubted. Having acted in good faith and in full compliance with the law as they understood it in assessing national banks, can there be any doubt that this Congress has full authority under the Constitution to declare—

That the act of a State legalizing, ratifying, or confirming a tax heretofore levied or assessed upon shares of national banking associations, or providing for the retention by said State of any of the tax heretofore paid, shall not be deemed hostile to, or inimical to the interests of, the United States or any agency thereof: *Provided*, That the amount retained, or to be retained, by such State is not in any case greater than the tax imposed for the same period upon banks, banking associations, or trust companies doing a banking business, incorporated by or under the laws of such State, or upon the moneyed capital or shares thereof.

I do not think that such authority admits of reasonable doubt. We have the power and ought to exercise it. It is not just to the State banks to have to carry a burden of taxation that is not imposed upon national banks that are in direct competition with them. Fairness demands that all banking institutions in direct competition with each other, seeking business in the same field under like conditions and serving like purposes, should bear the same burden of local taxation. To tax national banks upon the same basis as moneyed capital as defined by the Supreme Court is to give them an advantage which nothing in the situation or the services rendered by them can justify.

Numerous suits are now pending in my State, instituted by national banks against the municipalities in which they are situated, through which they are seeking to recover large sums paid in taxes in the past. Such suits can not be justified upon any basis of fairness, and ought not to be given aid and encouragement by this Congress. The Senate amendment will remedy the situation and compel these banks to bear their fair share of the burdens of government, and I therefore hope that it will be adopted.

[Mr. WILLIAMSON had leave to extend his remarks in the RECORD.]

Mr. LUCE. Mr. Speaker, I yield eight minutes and a half to the gentleman from New York [Mr. COCKRAN].

Mr. COCKRAN. Mr. Speaker, the course of this debate vindicates strikingly the observation made by Michelet in his account of the Sicilian Vespers—that sanguinary fruit of an oppressive tax six centuries ago—about the effect produced by the "legists" upon the development of liberty, civilization, and order in Europe. He pointed out that under the feudal system, when it was in full operation, moneys taken from the subject by the sovereign were seized by force, and when these exactions became unduly severe they inevitably bred resistance; but when the "men of law" appeared—the *legists*, as he styled them—their function was to invent formulas so sonorous and apparently of such lofty purpose that under their influence men naturally high spirited and impatient of oppression became submissive to wrong, while other men, who would naturally have looked with repugnance upon any exercise of tyranny, were often induced not merely to tolerate and sanction it but even to become active perpetrators of it. And so, Mr. Chairman, we have here gentlemen naturally of a robust democracy, actually defending a proposal to enrich national banks at the expense of all other taxpayers, under the spell of mellifluous phrases about the sacredness of judicial decisions, State rights, and other abstractions.

That this is not an exaggeration of rhetoric but an accurate statement of fact will be apparent if we realize the precise character of the question before the House. Stated in the briefest terms, it is this: Shall the national banks—perhaps the very richest elements of our civic life—be made to contribute their fair proportion to the cost of government—that is to say, of protecting the enormous riches which they possess—or shall their proper proportion of public expense be imposed upon others, and they the poorest members of the community?

The national banks for the last three years have been taxed certain sums which, until a short time ago, were paid without question—without any question of their fairness or justice. Lately the courts have held by a technical construction that under the law imposing this levy a distinction was created between these corporations and other entities subject to taxation. There was no pretense that any injustice has been done. It was not even held that any disproportion was actually created between these different taxpayers. But it was held that under the law as it stood such a distinction might be established between the amount collected from national banks and that exacted from other persons engaged in banking. On that technical construction the whole law imposing the tax has been set aside, and some $20,000,000 collected without question during three years, and long since expended for public purposes, must now be refunded.

Mr. STEVENSON rose.

Mr. COCKRAN. I have not the time to yield. I do not think anybody will question that this statement of the proposition now before the House is absolutely fair. The proposal we ask the House to adopt is that, notwithstanding this technical defect in the method of imposing the tax, the Federal Government in the exercise of its sovereign power through Congress—which is the depository of that sovereignty—shall sanction that levy.

I am not going to discuss now whether that would be "after" taxation, "back" taxation, "retroactive" taxation, or taxation under any other descriptive term. It is enough for me to know that it is taxation.

When the power to tax exists it is necessarily absolute, without limitation of any kind on the amount to be imposed. This Congress has a perfect right to levy in one year the amount that ordinarily it might have levied in three years. And that practically is all that it is asked to do now—to sanction, to validate the collection of what these banks lawfully owed, equitably owed, during the last three years for the support of government. No one denies that here is a situation where somebody must make good the loss which the various States and municipalities affected by the decision must sustain if this proposal which we are urging be defeated. The gentleman from Arkansas [Mr. WINGO] tells us that he has a measure for meeting this emergency which is more perfect than the proposal we are urging. I shall not discuss the grounds of his assertion, for the reason that the bill with the Senate amendment is the only measure that has any chance of passing during this Congress. To amend it means to defeat it. The question is, Will this Government exercise its sovereign power to do justice or will it allow gross injustice to be perpetrated by failure to perform what right obviously demands?

Gentlemen on the other side seem to suggest that this enormous sum properly due for taxes might be remitted as an act of generosity to the bankers and that nobody will be hurt by it. Nothing could be further from the fact. The amount of these taxes must be obtained by the Government from some source. There is no way in which the loss of revenue caused by failure of these banks to bear their share of the public expense can be made good except through a contribution by somebody else.

Where is it to come from? In finding the answer to this question we will see clearly where lies the equity of this question.

Gentlemen may not be aware of the fact—I have taken the floor because so far it has not been made clear in this debate—that under our New York constitution no levy of taxes can be made beyond 2 per cent of the property subject to assessment. We are now collecting every year a sum equal to 1.97½ per cent of that amount. We can not, therefore, increase the tax levy to make good the $20,000,000. We can not issue bonds under the limitations of our constitution. How, then, are we to find the money that—unless Congress affords us relief—we must pay to the national banks? In one way only: We must cut down the present expenses of the city government. And where must that reduction occur? Only in one field of public expenditures is it practical: We must cut expenditures for education, for police, for prevention against fire and against the spread of disease. Here, then, is surely an occasion when the sovereign power of government should be exercised to do equity. You, gentlemen of the House, can exercise that sovereignty. And where the power to do equity exists you can not refuse to put it in effect and remain fully loyal to your duty.

Shall these bankers, bloated with profits, whose dividends have risen to a degree that almost shocks the economic conscience of the thoughtful and the patriotic, be given in addition to these swollen revenues a contribution of $20,000,000, taken from the clerks, the scrubwomen, the policemen, the teachers, and all the other meritorious persons laboring in humble but most useful capacities for the welfare of our entire citizenship? There is no other source from which such an unholy contribution can be taken.

To prove conclusively that if this relief be denied us there is no power anywhere to find one dollar to meet this deficiency of $20,000,000 except by cutting down the city budget in the directions I have mentioned—that is to say, by reducing the salaries or cutting down the numbers of municipal employees—I need but mention that no later than last Monday the governor of our State, under a provision of the constitution, sent an emergency message to the legislature asking authority for the New York City officials to meet and change their budget in the very direction that I have mentioned. That law was passed and signed.

It affords the only means that the State of New York can adopt to meet this situation. If relief be afforded by adoption here of the Senate amendment, the emergency law will not be invoked. But if this Senate amendment fails, the State of New York must put this emergency law in operation. The profits of the bankers will be increased enormously although there is not one of them that can show a deficit in earnings during the last few years. There is not one of them that has failed during that time to declare huge dividends. And now this House, if it reject this appeal for relief, will further increase the swollen earnings of these corporations, and at the same time take from the miserable pittances paid to public employees the amount that will be necessary to supply this deficiency. [Applause.]

The SPEAKER pro tempore. The time of the gentleman from New York has expired.

Mr. LUCE. Mr. Speaker, how much time have I remaining?

The SPEAKER pro tempore. The gentleman has half a minute remaining.

Mr. LUCE. Mr. Speaker, I take this time in order that I may explain to the House that the motion will undoubtedly be divided and, as I understand, both sides desire that the House shall recede. The important vote comes on the question of concurring. I have moved to concur with the Senate amendment in order that I may relieve of their embarrassments the States in which suits to the extent of many millions have already been brought—North and South Dakota, Minnesota, Wisconsin, New York, Massachusetts—and, I understand, Vermont, Connecticut, in which suits are threatened, Virginia, in which suits are probable, for the recovery of money to which the banks are not in equity entitled, which belongs to the taxpayers under the law as it was construed for 50 years until it was upset on the score of a technicality.

Mr. McFADDEN. Mr. Speaker, referring to the remarks just made by the gentleman from Massachusetts, I hope that those people, who believe as I do, and by that I mean the Members who are in favor of the protection afforded by section 5219 of the Revised Statutes as amended by the amendment which I have proposed, will vote to recede. If the motion then is on my proposition to concur with an amendment, I shall be satisfied, but if the vote is then on the question of accepting the Senate bill as it now appears, I hope that vote will not prevail. I want to be perfectly frank with the House. The conferees are not agreed that the provisions even of the Senate bill should pass in the present form. We are not agreed that the provisions in the House bill are in proper form. As I stated previously, I shall offer an amendment to perfect the other paragraphs of the bill, and they are important. I do not want the House to be deceived by the peculiar parliamentary situation which has arisen. Do I understand the vote will come first on the motion of the gentleman from Massachusetts to recede?

The SPEAKER pro tempore. The first vote will be on the motion of the gentleman from Massachusetts to recede. His motion was originally to recede and concur, but that motion has been divided on a demand for a division. The first vote will be on the question to recede.

Mr. McFADDEN. Then the next motion——

The SPEAKER pro tempore. The next preferential motion will be on the motion of the gentleman from Pennsylvania to concur with an amendment.

Mr. McFADDEN. This is perfectly clear then.

Mr. WINGO. May I suggest to the House that we on this side would be willing to recede.

Mr. McFADDEN. I so understand and I hope this side will vote likewise.

Mr. WINGO. And then have a straight vote upon concurring in the amendment.

Mr. McFADDEN. I wanted to make it perfectly clear to the membership of the House that the second vote would not be on accepting the Senate amendment, as proposed by the gentleman from Massachusetts, but upon my motion to concur with an amendment.

Mr. LUCE. Will the gentleman yield?

Mr. McFADDEN. I yield the remainder of my time to the gentleman from Vermont [Mr. DALE].

Mr. DALE. Mr. Speaker, I simply want to make a statement in connection with the statement of the gentleman from Massachusetts that there is a suit pending in Vermont. There is no suit pending in Vermont that is based in any way on the particular question that is involved here. The suit that is pending in Vermont—and there is only one important suit pending there that he can in any way have reference to—is a suit that is based on certain specific Vermont statutes, and it is a question entirely different from the question that is now being considered here.

The SPEAKER pro tempore. The time of the gentleman from Pennsylvania has expired. The Chair will state the parliamentary situation and the questions in the order of their precedence. The gentleman from Pennsylvania moves to recede and concur with an amendment. The gentleman from Massachusetts moves to recede and concur, which at that moment had precedence. A division was demanded of the motion of the gentleman from Massachusetts which the House had the right to make. The question was divided, and therefore the first motion put will be on the motion of the gentleman from Massachusetts to recede. The question is on the motion to recede.

The question was taken, and the motion to recede was agreed to.

The SPEAKER pro tempore. The question now recurs on the motion of the gentleman from Pennsylvania to concur with an amendment to paragraph 5, which the Clerk will again report.

The motion to concur with an amendment was again reported.

The SPEAKER pro tempore. The question is on the motion to concur with an amendment.

Mr. McFADDEN. Mr. Speaker, upon that I demand the yeas and nays.

The yeas and nays were ordered.

The question was taken; and there were—yeas 220, nays 85, not voting 122, as follows:

YEAS—220.

Almon	Burdick	Curry	Fields
Andrews, Nebr.	Burton	Dale	Fisher
Anthony	Butler	Darrow	Focht
Appleby	Byrnes, S. C.	Davis, Tenn.	Fordney
Arentz	Byrns, Tenn.	Deal	Foster
Aswell	Cable	Dickinson	Frear
Bankhead	Campbell, Kans.	Dominick	Free
Barbour	Campbell, Pa.	Doughton	Fuller
Barkley	Cannon	Drewry	Fulmer
Bell	Cantrill	Driver	Gahn
Benham	Carter	Dunbar	Garrett, Tenn.
Bixler	Chalmers	Dupré	Garrett, Tex.
Blakeney	Chandler, Okla.	Echols	Gensman
Bland, Va.	Chindblom	Elliott	Gernerd
Boies	Cole, Iowa	Evans	Gilbert
Bowling	Collier	Fairchild	Goodykoontz
Box	Collins	Fairfield	Graham, Ill.
Briggs	Colton	Faust	Griest
Brown, Tenn.	Crago	Favrot	Hadley
Buchanan	Cramton	Fenn	Hammer
Bulwinkle	Crisp	Fess	Hardy, Colo.

Haugen	Leatherwood	Oliver	Strong, Pa.
Hawley	Lee, Ga.	Parks, Ark.	Summers, Wash.
Hays	Lineberger	Pou	Sumners, Tex.
Henry	Little	Pringey	Sweet
Hersey	Longworth	Purnell	Taylor, Ark.
Hickey	Lowrey	Quin	Taylor, Colo.
Himes	Lyon	Radcliffe	Temple
Hoch	McArthur	Rainey, Ala.	Thompson
Hooker	McCormick	Raker	Tillman
Hudspeth	McDuffie	Rankin	Tilson
Hull	McFadden	Ransley	Tincher
Humphrey, Nebr.	McKenzie	Reed, W. Va.	Tinkham
Husted	McLaughlin, Mich.	Rhodes	Towner
Ireland	McLaughlin, Pa.	Ricketts	Tucker
Jefferis, Nebr.	McPherson	Roach	Turner
Jeffers, Ala.	MacLafferty	Robertson	Tyson
Johnson, Ky.	Madden	Robsion	Upshaw
Johnson, Wash.	Mapes	Rouse	Vaile
Jones, Tex.	Martin	Sanders, Ind.	Vestal
Kearns	Michener	Sandlin	Vinson
Kelley, Mich.	Miller	Scott, Tenn.	Ward, N. Y.
Kendall	Mondell	Sears	Wason
Ketcham	Montague	Shreve	Watson
Kiess	Moore, Ill.	Sinclair	Weaver
Kincheloe	Moore, Ohio	Sinnott	Webster
Kline, Pa.	Moores, Ind.	Sisson	White, Kans.
Kopp	Morgan	Smith, Idaho	Wilson
Langley	Murphy	Smithwick	Wingo
Lankford	Nelson, Me.	Snyder	Woodruff
Larsen, Ga.	Nelson, J. M.	Speaks	Woodyard
Lawrence	Newton, Mo.	Steagall	Wright
Layton	Nolan	Stedman	Wurzbach
Lazaro	Norton	Stephens	Wyant
Lea, Calif.	Oldfield	Stevenson	Zihlman

NAYS—85.

Ackerman	Goldsborough	McLaughlin, Nebr.	Riordan
Anderson	Graham, Pa.	MacGregor	Sanders, N. Y.
Andrew, Mass.	Green, Iowa	Magee	Sanders, Tex.
Bacharach	Greene, Mass.	Maloney	Siegel
Beck	Griffin	Mansfield	Snell
Black	Hill	Mead	Stafford
Blanton	Hogan	Merritt	Steenerson
Bond	Huddleston	Mills	Sullivan
Carew	Johnson, S. Dak.	Mott	Swank
Christopherson	Kelly, Pa.	Nelson, A. P.	Tague
Clague	Kirkpatrick	Newton, Minn.	Taylor, N. J.
Clarke, N. Y.	Kissel	O'Connor	Ten Eyck
Cockran	Kleczka	Paige	Underhill
Connally, Tex.	Kline, N. Y.	Parker, N. J.	Voigt
Cooper, Wis.	Knutson	Parker, N. Y.	Volk
Coughlin	Lanham	Patterson, N. J.	Volstead
Dallinger	Larson, Minn.	Paul	Williamson
Dunn	Lehlbach	Perlman	Winslow
Fish	Linthicum	Rainey, Ill.	Young
Frothingham	Logan	Ramseyer	
Gallivan	London	Rayburn	
Gifford	Luce	Reed, N. Y.	

NOT VOTING—122.

Abernethy	Drane	Kitchin	Rucker
Ansorge	Dyer	Knight	Ryan
Atkeson	Edmonds	Kraus	Sabath
Beedy	Ellis	Kreider	Schall
Begg	Fitzgerald	Kunz	Scott, Mich.
Bird	Freeman	Lampert	Shaw
Bland, Ind.	French	Lee, N. Y.	Shelton
Bowers	Funk	Luhring	Slemp
Brand	Garner	McClintic	Smith, Mich.
Brennan	Glynn	McSwain	Sproul
Britten	Gorman	Michaelson	Stiness
Brooks, Ill.	Gould	Moore, Va.	Stoll
Brooks, Pa.	Greene, Vt.	Morin	Strong, Kans.
Browne, Wis.	Hardy, Tex.	Mudd	Swing
Burke	Hawes	O'Brien	Taylor, Tenn.
Burtness	Hayden	Ogden	Thomas
Chandler, N. Y.	Herrick	Olpp	Thorpe
Clark, Fla.	Hicks	Overstreet	Timberlake
Classon	Huck	Park, Ga.	Treadway
Clouse	Hukriede	Patterson, Mo.	Walters
Codd	Humphreys, Miss.	Perkins	Ward, N. C.
Cole, Ohio	Hutchinson	Petersen	Wheeler
Connolly, Pa.	Jacoway	Porter	White, Me.
Cooper, Ohio	James	Reber	Williams, Ill.
Copley	Johnson, Miss.	Reece	Williams, Tex.
Crowther	Jones, Pa.	Riddick	Wise
Cullen	Kahn	Rodenberg	Wood, Ind.
Davis, Minn.	Keller	Rogers	Woods, Va.
Dempsey	Kennedy	Rose	Yates
Denison	Kindred	Rosenbloom	
Dowell	King	Rossdale	

So the motion to concur with an amendment was agreed to.

The Clerk announced the following pairs:

On this vote:

Mr. Greene of Vermont (for) with Mr. Treadway (against).

Mr. Moore of Virginia (for) with Mr. Rogers (against).

Mr. Rucker (for) with Mr. Lampert (against).

Mr. Johnson of Mississippi (for) with Mr. Brown of Wisconsin (against).

Mr. French (for) with Mr. Cullen (against).

Mr. White of Maine (for) with Mr. Burtness (against).

Mr. Kraus (for) with Mr. Kindred (against).

Until further notice:

Mr. Edmonds with Mr. Abernethy.

Mr. Begg with Mr. Woods of Virginia.

Mr. Porter with Mr. Hawes.

Mr. Wood of Indiana with Mr. McClintic.

Mr. Davis of Minnesota with Mr. Park of Georgia.

Mr. Kahn with Mr. Williams of Texas.

Mr. Beedy with Mr. Brand.

Mr. Cooper of Ohio with Mr. Garner.

Mr. Denison with Mr. Humphreys of Mississippi.

Mr. Morin with Mr. McSwain.

Mr. Williams of Illinois with Mr. O'Brien.

Mr. Swing with Mr. Sabath.

Mr. Crowther with Mr. Hardy of Texas.

Mr. Dowell with Mr. Clark of Florida.

Mr. King with Mr. Drane.

Mr. Freeman with Mr. Kunz.

Mr. Perkins with Mr. Thomas.

Mr. Keller with Mr. Kitchin.

Mr. Fitzgerald with Mr. Ward of North Carolina.

Mr. Rosenbloom with Mr. Wise.

Mr. Timberlake with Mr. Jacoway.

Mr. Michaelson with Mr. Overstreet.

Mr. Patterson of Missouri with Mr. Stoll.

Mr. Connolly of Pennsylvania with Mr. Hayden.

The result of the vote was announced as above recorded.

Mr. McFADDEN. Mr. Speaker, I move that the House recede and concur in the remainder of the Senate amendment with an amendment as follows.

The Clerk read as follows:

Mr. McFADDEN moves that the House recede and concur in the remainder of the Senate amendment with an amendment as follows: Beginning with line 6, on page 3, strike out down to and including line 25, page 4, and insert in lieu thereof the following:

"SEC. 5219. The legislature of each State may determine and direct, subject to the provisions of this section, the manner and place of taxing all the shares of national banking associations located within its limits. The several States may tax said shares or include dividends derived therefrom in the taxable income of an owner or holder thereof, or tax the income of such associations, provided the following conditions are complied with:

"1. (a) The imposition by said State of any one of the above three forms of taxation shall be in lieu of the others.

"(b) In the case of a tax on said shares the tax imposed shall not be at a greater rate than is assessed upon other moneyed capital in the hands of the individual citizens of such State coming into competition with the business of national banks: *Provided*, That bonds, notes, or other evidences of indebtedness in the hands of individual citizens not employed or engaged in the banking or investment business and representing merely personal investments not made in competition with such business, shall not be deemed moneyed capital within the meaning of this section.

"(c) In case of a tax on the net income of an association the rate shall not be higher than the rate assessed upon other financial corporations nor higher than the highest of the rates assessed by the taxing State upon the net income of mercantile, manufacturing, and business corporations doing business within its limits.

"(d) In case the dividends derived from the said shares are taxed the tax shall not be at a greater rate than is assessed upon the net income from other moneyed capital.

"2. The shares or the net income as above provided of any national banking association owned by nonresidents of any State, or the dividends on such shares owned by such nonresidents, shall be taxed in the taxing districts where the association is located and not elsewhere; and such associations shall make return of such income and pay the tax thereon as agent of such nonresident shareholders.

"3. Nothing herein shall be construed to exempt the real property of associations from taxation in any State or in any subdivision thereof to the same extent, according to its value, as other real property is taxed."

Mr. McFADDEN. Mr. Speaker, I ask unanimous consent, in section B, the third line, that the word "the" before "individual" be stricken out.

The SPEAKER pro tempore. The gentleman from Pennsylvania asks unanimous consent to modify his motion in the manner indicated. Is there objection?

Mr. WINGO. Where is that?

Mr. McFADDEN. It is a stenographic error, that is all—so it will read "other moneyed capital in the hands of individual citizens" instead of "the individual citizens."

The SPEAKER pro tempore. Is there objection? [After a pause.] The Chair hears none.

Mr. LONGWORTH. Mr. Speaker, will the gentleman yield?

Mr. McFADDEN. Yes.

Mr. LONGWORTH. That is an extremely complicated amendment, and one very difficult for a layman to understand. May I ask the gentleman who is the author of it and how it has been agreed upon?

Mr. McFADDEN. It is mine, with the exception of one paragraph, which is the work of the Senate conferees and the House conferees; and I may say the Senate conferees are in accord with it.

Mr. LONGWORTH. The Senate conferees are in accord with this proposition?

Mr. McFADDEN. Yes; with the exception of one paragraph, which I will endeavor to explain to the House. I will try to explain the situation.

Mr. LONGWORTH. Then, this is in compliance with or the result of those consultations?

Mr. McFADDEN. It is.

Mr. WILLIAMSON. Mr. Speaker, will the gentleman yield?

Mr. McFADDEN. Yes.

Mr. WILLIAMSON. Is the last proviso on page 5 left in the bill?

Mr. McFADDEN. We have removed the Senate provision by the vote we have just taken and substituted for it another provision by vote of the House.

Mr. MILLS. Mr. Speaker, as I heard the provision read, it provided that national banks could not be taxed at a higher rate than manufacturing corporations.

Mr. McFADDEN. That is true under certain conditions. That is one of the limitations in one of the provisions of the bill. I think if gentlemen will wait until I have an opportunity to explain this proposition to the House all their questions will be answered. It is my intention to ask for sufficient time so that this matter may be discussed. I do not want to hold the House for a useless explanation; but this is a complicated matter, and I believe the House has the right to know about it.

Mr. Speaker, is there any objection to my unanimous-consent request?

The SPEAKER pro tempore. The gentleman from Pennsylvania has one hour in his own right on his motion.

Mr. McFADDEN. I was not sure whether there was an objection made to my unanimous-consent request.

A MEMBER. You have not made any.

The SPEAKER pro tempore. The request made by the gentleman from Pennsylvania, which was to modify his motion, was agreed to.

Mr. LUCE rose.

The SPEAKER pro tempore. For what purpose does the gentleman from Massachusetts rise?

Mr. LUCE. To reserve the right to object.

The SPEAKER pro tempore. There is no question pending to which the gentleman from Massachusetts may object.

Mr. LUCE. I ask unanimous consent to make an inquiry of the gentleman from Pennsylvania [Mr. McFADDEN].

The SPEAKER pro tempore. That can be done with the consent of the gentleman from Pennsylvania.

Mr. LUCE. Will the gentleman yield?

Mr. McFADDEN. Yes; but not to lose the floor.

Mr. LUCE. I understand it was the gentleman's intention that the time should be divided?

Mr. McFADDEN. It is my intention to yield for debate without losing my right to control the time. I shall be very glad to yield time if I can, if the parliamentary situation is favorable to yielding. I have no desire except to have a proper and thorough discussion of this bill by both sides, and if the parliamentary situation is such that I may yield a part of my time to those in opposition, I will do so.

The SPEAKER pro tempore. The gentleman can yield to anyone except for the purpose of offering an amendment.

Mr. WINGO. The gentleman from Massachusetts [Mr. LUCE] may want to use some time?

Mr. LUCE. Yes.

Mr. WINGO. Then why not let the gentleman from Pennsylvania move that one half of the time be controlled by himself and the other half by the gentleman from Massachusetts, at the end of which time he will move the previous question?

Mr. LONGWORTH. A simpler way will be for the gentleman from Pennsylvania to yield half an hour to the gentleman from Massachusetts.

The SPEAKER pro tempore. If at the end of the discussion it should appear that an amendment might be desirable, an amendment of some minor character, the previous question will be understood to have been ordered. The gentleman from Pennsylvania has control of the hour, and he may use it as he sees fit. The gentleman from Pennsylvania is recognized.

Mr. LUCE. Mr. Speaker, a parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state it.

Mr. LUCE. Is my motion to recede and concur still pending?

The SPEAKER pro tempore. The motion of the gentleman from Massachusetts to recede and concur was submerged in the motion to concur with an amendment.

Mr. LUCE. Do I have further opportunity to make the same motion?

The SPEAKER pro tempore. The Chair thinks not, with respect to paragraph 5, but with respect to other motions, if the gentleman from Massachusetts has the floor, it would be in order to move for that purpose.

Mr. LUCE. I move to recede and concur.

The SPEAKER pro tempore. The gentleman was not recognized for that purpose.

Mr. STAFFORD. Is it not a preferential motion until the recession is had?

The SPEAKER pro tempore. The recession on this matter has not been moved.

Mr. STAFFORD. Is not a motion to recede and concur a preferential motion over a motion to recede and concur with an amendment?

The SPEAKER pro tempore. The Chair does not understand the gentleman.

Mr. MONDELL. Mr. Speaker, the chairman of the committee [Mr. McFADDEN] is in charge of the time. The gentleman from Massachusetts [Mr. LUCE] desires to enter a preferential motion. That could be done, I assume, without the gentleman from Pennsylvania losing the floor.

The SPEAKER pro tempore. Certainly; if the gentleman from Massachusetts has a preferential motion, he may enter it now.

Mr. LUCE. I move to recede and concur.

The SPEAKER pro tempore. That will be pending. That is in the remainder of the Senate bill.

Mr. McFADDEN. Now, Mr. Speaker, let it be clearly understood that it is my desire to yield one-half of the time to the gentleman from Masssachusetts [Mr. LUCE], who is opposed to this proposition, for the purpose of debate only.

Mr. MONDELL. And the gentleman from Pennsylvania to retain control of the time.

Mr. McFADDEN. Yes. Otherwise I shall be forced not to yield.

The SPEAKER pro tempore. The gentleman from Pennsylvania is in a position to retain the floor and to control his time.

Mr. McFADDEN. Mr. Speaker and gentlemen of the House, it is my purpose, as briefly as I can, because of the lateness of the hour, to explain this amendment, and therefore I will ask not to be interrupted until I have completed my short analysis of this measure.

It will be noticed by the Members present who have followed the debate that my amendment deals with the balance of the bill, except that which we have voted on, which is the validating clause. This amends section 5219 of the Revised Statutes of the United States, and is an honest attempt to modernize the statute and reconcile the differences in the two measures before us. To say that we have confined our work to the one section of validation would be an error. We have broadened the rights of the States to tax national banks just to the extent that we believe that it is safe to permit the States to tax national banks and leave the national banks the right to exist. The States of late have broadened their laws regulating the State banks to such an extent that there is a rivalry existing to-day between the State banking institutions and the national banks. The State-bank problem has changed completely since section 5219 was originally enacted. We have almost arrived at the point where this competition for the rights given by States to their own institutions to make money is a serious matter for the national banks, which are the pillars and foundation of the Federal reserve system. The only rights, even, that the national banks have over the State banks is the right afforded in section 5219 to protect them from an undue tax by the several States. If we open the door and permit indiscriminate taxation of the national banks, I am fearful—and in this view I have the concurrence of the Comptroller of the Currency as expressed to me to-day—that it will drive the national banks out of the system, and they will say, "What is the use? If the only remaining thing that is left to us in the way of protection is taken from us, we might as well go under the State law."

I would like to call attention to the predicament that we would be in if the national banks left the Federal reserve system to-day. There is a kind of rivalry existing among many of the larger banks due to the popularity that has grown up in the city because of the fact that the State laws have been so broadened that they are driving the national banks from this system.

I am sure that it is unnecessary for me to call the attention of Members to this situation, but in the State of California to-day there is hardly a national bank left. In Ohio, Michigan, in interior New York, and in New England many national banks because the State laws have been broadened have left the national system. That is the one important thing in connection with this whole matter. So the conferees have taken the two bills which the Senate and the House have passed and after due deliberation with the tax commissioners and attorneys representing the banks of the country over a period of almost a year have tried faithfully and honestly to make a workable plan. The conferees are practically in agreement on

everything except section (b) in my amendment, and in this we realize that that is the vital part, the permanent legislation providing the authority to the States to permit the future taxing of national banks.

I want to read what is in disagreement with the Senate conferees:

(b) In the case of a tax on said shares the tax imposed shall not be at a greater rate than is assessed upon other money capital in the hands of individual citizens of such State coming into competition with the business of national banks: *Provided*, That bonds, notes, or other evidences of indebtedness in the hands of individual citizens not employed or engaged in the banking or investment business and representing merely personal investments, not made in competition with such business shall not be deemed moneyed capital within the meaning of this section.

Now, owing to the decision of the Supreme Court of the United States in the so-called Richmond case section 5219 was broadened to include "as other moneyed capital in the hands of individuals"—mortgages, bonds, and so forth. What we are attempting to do here is to make a clean-cut proposition, so that national banks will be taxed in the same manner as private money or money in the hands of private individuals and private banking capital in the United States. The Senate's last provision suggested to the conferees provided a different classification. It provided that for the purposes of taxation national banks should be classed with State banks and be taxed in the same manner, with a provision that at no time should that tax exceed the amount of the tax that was levied on real estate and other tangible property.

Mr. LUCE. Will the gentleman yield?

Mr. McFADDEN. Yes.

Mr. LUCE. I think we would all be enlightened if the gentleman would make it clear whether when he speaks of money invested in private banks he has in mind the total capital of the private banker or that part which comes in competition with national banks.

Mr. McFADDEN. I presume that it would be that portion that comes in competition with the national banks.

Section (c) provides:

In the case of a tax on said shares the tax imposed shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens coming into competition with the business of national banks: *Provided*, That bonds, notes, or other evidences of indebtedness in the hands of individual citizens not employed or engaged in banking or investment business and representing merely personal investments not made in competition with such business shall not be deemed moneyed capital within the meaning of this section.

That provides for classification of taxation of the banks under an income form, which is a modern form of taxation which is equitable and just. There is no dispute, as I understand it, on the part of anyone about that being a proper basis for States having income tax laws.

Mr. MILLS. Mr. Speaker, will the gentleman yield?

Mr. McFADDEN. Yes.

Mr. MILLS. What would happen if the State did not tax manufacturing corporations?

Mr. McFADDEN. That is a limitation, I would say to the gentleman.

Mr. MILLS. But I notice that the gentleman has eliminated the language that was put in in the Senate provision.

Mr. McFADDEN. I would say to the gentleman that we provide that they shall be assessed on the same basis as financial corporations only at no higher rate than the highest rates assessed upon mercantile or manufacturing establishments. They shall be taxed upon the same basis as banks but not at a higher rate than that levied on corporations.

Mr. MILLS. Then assume, as is the case in the gentleman's State, that manufacturing corporations are not taxed at all, do you not inevitably get the result that national banks can not be taxed?

Mr. McFADDEN. No; I do not; because they are to be taxed at the same rate as other moneyed capital in the hands of its citizens or financial institutions coming into competition with them are taxed, and in Pennsylvania they are now taxed alike, and no dispute arises and everyone is satisfied.

Mr. HUSTED. Mr. Speaker, will the gentleman yield?

Mr. McFADDEN. Yes.

Mr. HUSTED. If the business corporations were not taxed in any way, then it would have absolutely no effect whatever, there would be no control as to the rate of taxation on national banks in that State, and the only provision that would control would be the one that they are not to be taxed at a higher rate than other financial institutions.

Mr. McFADDEN. That is correct.

Mr. MILLS. Then what would happen in the case of the State of New York where the manufacturing corporations are taxed on a low income tax basis, much lower than other corporations, the theory being that we wanted to encourage manufacturing. Does that mean that national banks could not be taxed at a higher rate than we tax our manufacturing corporations?

Mr. McFADDEN. No, it provides that they shall be taxed exactly as other financial institutions shall be taxed with the limitation that in no case shall the tax exceed the amount levied against corporations.

Mr. WINGO. Oh, no; the first test is that they shall be taxed at no higher rate than other financial corporations—that is, other banks. The other is that they shall not be assessed at a higher rate than the highest mercantile, manufacturing, and business concerns. I insisted on the change so that if they wished to exempt manufacturing corporations they could. It does not say manufacturing or mercantile or business establishments, it says "manufacturing and." In other words, if you make manufacturing corporations totally exempt, business corporations having a certain rate, and then mercantile another, you would take the highest of them which should be the highest rate at which you could tax the income of national banks. You might have one rate for one, another rate for another, and another absolutely exempt, but you can tax the net income of a national banking corporation to the extent of the highest one of those three, even though one of them is wholly exempt. It is specifically worded in that way to permit the gentleman's State and mine and other States to exempt manufacturing corporations, if the State wishes to do so.

Mr. McFADDEN. Section (d) provides that in case of dividends derived from the shares so taxed the tax shall not be at a greater rate than is assessed on the net income from other moneyed capital.

Mr. Speaker, I am ready now to yield time to the gentleman from Massachusetts if he desires it. How much time does the gentleman desire?

Mr. LUCE. I would like to have 10 minutes.

Mr. McFADDEN. I yield 10 minutes to the gentleman from Massachusetts [Mr. LUCE] and reserve the remainder of my time.

Mr. NEWTON of Minnesota. Mr. Speaker, I am under the impression that there was a unanimous-consent agreement as to time.

Mr. WINGO. No; that was not agreed to.

Mr. McFADDEN. I intend to yield one-half of the time to the other side. I asked the gentleman from Massachusetts how much time he wanted, and I yielded what he asked for, 10 minutes.

Mr. LUCE. Yesterday, in company with many other Members of the House, I received a telegram, which proved to be identical with other telegrams sent here. I call attention to its last statement:

The Senate amendment is unjust and vicious legislation and it jeopardizes the existence of our national banks.

An interesting and in some aspects an amusing thing is that the Senate amendment throws more protection around the national banks than the House amendment. The Senate amendment provides that in the matter of the taxing of shares—and I am not now referring to income—of banking associations they shall not be taxed at a higher rate than the shares of business corporations. That amendment was not in the draft that came from the House, and in this particular the Senate actually increased the protection thrown around the banks by the House bill. This is a vital thing because the only menace to the banks comes from such a situation as that which arose in North Dakota, where the State saw fit to try to tax the banks out of existence, if it could, in order to establish its own State institution.

The amendment proposed by the gentleman from Pennsylvania, in which he asks us to recede still further from our original position, if I understand it aright, strikes out this provision which the Senate intended for the protection of the banks, with the result that if his amendment is adopted the national banks will have a less degree of protection. I call it to the attention of the House, and I hope through you, sir, Mr. Speaker, it will reach the attention of the gentleman who sent these telegrams, that it is rash and unwise to sign form telegrams without reading them and knowing what they mean. [Applause.] When reputable men of high standing in a community see fit to send us telegrams that are untrue, how may they question our wish to exercise our judgment. I would it were possible to convey to these bankers our expression of deep regret that they should flood the Congress of the United States with inaccurate and misleading statements containing an element of untruth.

I will yield to the gentleman from New York [Mr. MILLS] 10 minutes.

Mr. WINGO. I make a point of order——

Mr. McFADDEN. Mr. Speaker, I yield the balance of the time allotted to the gentleman from Massachusetts to him now, which, I understand, is 20 minutes.

The SPEAKER pro tempore. The gentleman from Pennsylvania yields an additional 20 minutes to the gentleman from Massachusetts, which makes a total of 30 minutes, of which he has used 5 minutes.

Mr. WINGO. I understand the gentleman has 25 minutes remaining?

The SPEAKER pro tempore. The gentleman has 25 minutes remaining.

Mr. LUCE. I yield 10 minutes to the gentleman from New York [Mr. MILLS].

Mr. McFADDEN. Mr. Speaker, I think I have one more person to speak, and I wish gentlemen on the other side could use some of their time now. It is only fair that the affirmative side use all of their time.

Mr. LUCE. Mr. Speaker, I have no desire to be captious in the matter, but a very unfortunate situation has arisen. An amendment which may involve the most serious consequences to various States of the Union is laid before us without opportunity to study and reflect upon it. It is quite possible after an examination of the amendment we might desire——

Mr. WINGO. To what amendment does the gentleman refer?

Mr. LUCE. The amendment which has just been submitted by the gentleman from Pennsylvania.

Mr. WINGO. The gentleman from Massachusetts and the gentleman from New York certainly have seen this proposal for months.

Mr. McFADDEN. I will say there is not very much deviation here, except in one section (b), from what has been before the House.

Mr. WINGO. The only difference is in one paragraph (b), and the gentleman has studied that.

Mr. LUCE. I am advised one of my friends in this matter is ready to take the floor, and I yield 10 minutes to the gentleman from Minnesota [Mr. NEWTON].

Mr. NEWTON of Minnesota. Mr. Speaker, I believe that shares of stock of national banks should pay their fair share of taxes in the localities and States where the banks are situated. While many national banks have voluntarily been doing so, they have not been obligated to do so since the decision of the Supreme Court of the United States in 1921 in the Richmond bank case. All credit to those who have been voluntarily doing their part.

It is the business of this Congress to correct this inequality. If we adopt the Senate bill as amended, we will in a large measure correct it. It is true it is not just what we would like to have in Minnesota. I presume that other States will have some objections to it but it is far superior to the House bill, for if we should adopt the House bill we will merely continue the present discrimination. There certainly is no reason whatever why national banks should not pay the same tax as State banks or any other banking institution with which they come into competition.

The national-bank law was passed in 1864. They are to a certain extent Federal agencies. As such they can not be taxed by States or localities without the consent of Congress. While they are Federal agencies and perform a function as such, this function is largely incidental to the general banking powers which they possess by virtue of their charter. In fact, for almost all practical purposes, they are local institutions like State banks and private banks relying upon the local communities for their business. This being the case their shares of stock for taxation purposes should be upon the same basis as banks chartered by the State.

The Congress that enacted the original legislation appreciated this fact and so provided in the national-bank act. From that day until the time of the decision of the Richmond bank case in 1921 this idea was carried out in all of the States.

It will be observed that section 5219 of the Revised Statutes specifically states that nothing in the act shall prevent the States taxing the property providing it complies with two conditions. The only condition that is material in the discussion of this measure is the first one, which is that the taxation "shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State." Further provision is made that the real property belonging to the national-bank associations shall be assessed on the same basis as other real property. The whole idea was equality.

This phrase pertaining to "other moneyed capital in the hands of individual citizens" was construed by the Federal courts quite early to mean merely to prevent a State favoring, for taxation purposes, institutions and banks doing a like business but not possessing a Federal charter. I quote from National Bank *v.* Covington (103 Fed. 523):

> All that is done is, under section 5219, to guard money so invested against any form of State taxation which places it at a disadvantage as compared with money invested in State banks.

Other Federal courts rendered similar decisions and opinions. The law appeared to be settled and determined.

At the time of the enactment of the national-bank act practically all of the States taxed all personal property, both intangible and tangible, by means of a general property tax. It was discovered that whereas tangible property was paying taxes a great deal of the intangible property escaped taxation. The State of Maryland with this in mind enacted a law assessing intangible property, such as money and credits, at a 3-mill rate, which was materially less than the general property rate. The result was a tremendous increase in revenue. It was a clear demonstration that money and credits can not be effectively taxed if taxed at the same rate as real estate or tangible personal property. This has been clearly demonstrated in my own State.

In 1910, the year before our money and credit tax law took effect, there were 6,200 people in Minnesota assessed for money and credits, and we received, all told, $379,754 in revenue. In 1911, the first year under the new rate, there were 41,439 people assessed for $115,481,807, and in 1922 there were 109,081 people assessed for $400,688,948. The revenue for 1922 will amount to more than $1,200,000.

Other States followed Maryland and Minnesota, including Kentucky, South Dakota, North Dakota, Iowa, Virginia, Pennsylvania, Rhode Island, Connecticut, Missouri, Montana, Oklahoma, and Nebraska. In addition the States of Wisconsin, New York, and Massachusetts have enacted satisfactory and effective income tax laws.

When my own State placed "money and credits" on a 3-mill basis they excepted credits secured by real-estate mortgages recorded in the State and money and credits belonging to banks, whether State or national. Shares of stock of banks, State and national, are subject to the general property tax and carry the same rate which is imposed on general personal property in the assessment district where the bank is located. There is no discrimination in favor of either.

So far as I have been able to ascertain, up to recently there never has been any protest from any of the national banks of the State about this legislation. On the other hand, it was favored by all banking interests at the time and up to the time of the Richmond bank decision. Furthermore, the "money and credits" tax law was held not to discriminate against national banks by the circuit court of appeals in an exhaustive opinion in the case of the National Bank of Baltimore against the City of Baltimore. The difference was the difference between a 3-mill tax and a 20-mill tax. In the aggregate the amount involved was $600,000 in that particular case. This decision was apparently so well founded in justice and in law that the bank accepted it, for no appeal was taken to the Supreme Court of the United States.

It remained a law, then, until this Richmond bank case. In this case the city of Richmond levied a tax of $1.75 per $100 on all bank stock, State or national. The tax on money and credits was 95 cents per $100. This Richmond bank case overturned these decisions and construed the phrase "other moneyed capital in the hands of individual citizens" literally, so that no greater rate could be charged upon shares of stock of national banks than was charged upon bonds, notes, and other like evidences of indebtedness.

When this decision was announced it was the subject of considerable thought and discussion upon the part of the tax commissioners of the States affected. They got into communication with the tax commissioners from other States of the Union, and they met here in December, 1921, and asked Congress to enact legislation which would so change the law as to avoid the effect of the Richmond bank decision. They appeared before the Committee on Banking and Currency and there advocated this legislation. They there told the committee that the States which had a money and credits tax would have to change their money and credits tax law if section 5219 was not changed so as to adapt it to modern State tax systems. A 3-mill tax on national-bank stock is a rank discrimination against State banks and other concerns paying a general property tax which is much higher. The predicament of these States was ably and fully presented. The general counsel of the American Bankers' Association appeared and urged the committee to leave the law unchanged. He said, "We (the association) do not want it altered in any respect."

The newspapers of my own city have quoted some banker as authority for the statement that it will make a difference of $500,000 a year in the city of Minneapolis alone. I am surprised that an association of this kind should want this inequality to continue.

Now, if the national banks do not pay their share of the tax, it must come out of the other individuals in the community, just as the gentleman from New York said a few minutes ago. It will come out of the farmer, the merchant, and the manufacturer. Why should the national banks of the country receive different consideration than these others? Why should they ask it?

Until a day or two ago I was under the impression that the great majority of our national banks felt the same way about it, and that they did not ask to be considered any differently for taxation purposes than State banks. Some of the officials of the leading banks in Minnesota have so expressed themselves.

To-day, however, I have received a number of telegrams from banks and associations requesting me to insist on the House bill and to vote down the Senate amendment. To do so would be unfair to the great mass of taxpayers in my State, for the House bill does no more practically than reenact section 5219 as now interpreted by the Supreme Court.

This will leave us where we now are. The gentleman from Pennsylvania [Mr. McFADDEN] has just offered a motion to concur by amending the House bill. What this will do I do not know and no one else does.

The first intimation that I had that the conferees would to-day submit proposals of their own was when the gentleman from Pennsylvania made the statement at the opening of to-day's session. The first opportunity that I have had to examine it was following its report to the House a moment ago. The amendment takes up a page of the bill.

Mr. SWEET. Mr. Speaker, will the gentleman yield?

Mr. NEWTON of Minnesota. I regret I can not.

In this brief time I can not tell just what its effect will be. I am not a tax expert. But I know that the State tax commissioners of the country have advised us that the provisions in the Senate bill are workable, that they are fair to the banks and to the people, and I believe that until we get evidence to the contrary we ought to stand by those provisions that have been agreed to by the Senate.

Let me remind you of this practical proposition. This validating provision that we have just voted on is not a necessary part and parcel of the other provision. The bill can either pass or fail without that validating proposition being in it. But suppose the conferees, who have been for four weeks trying to get together—and I believe what the gentleman has said, that they have conscientiously tried to arrive at an agreement with the Senate conferees—can not agree? We are in session only four more days. Their differences are great, and remain so with this amendment.

The SPEAKER pro tempore. The time of the gentleman from Minnesota has expired.

Mr. STAFFORD. Mr. Speaker, the gentleman was yielded 10 minutes; he has used only 5.

The SPEAKER pro tempore. The gentleman's time has expired.

Mr. STAFFORD. Mr. Speaker, a parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state it.

Mr. STAFFORD. May I inquire when the gentleman from Minnesota began to speak?

The SPEAKER pro tempore. The Chair is informed that he began at 4.20.

Mr. NEWTON of Minnesota. Mr. Speaker, it is evident that the timekeeper does not know what he is doing to-day. That is the second experience we have had this afternoon with the timekeeper. I ask for five minutes more.

Mr. WINGO. The gentleman says he has not used all his time.

Mr. STAFFORD. If, as the timekeeper says, he began at 4.20, he has used 15 minutes. But the fact is he has used only five minutes.

The SPEAKER pro tempore. The gentleman from Minnesota asks unanimous consent to proceed for five minutes more. Is there objection?

Mr. STAFFORD. Not to be taken out of the hour.

There was no objection.

The SPEAKER pro tempore. The gentleman from Minnesota is recognized for five minutes more.

Mr. NEWTON of Minnesota. For four weeks these conferees have been trying to get together. They have so far failed. They were so far apart that they came to the House with a report of disagreement with the statement that they could not agree. You and I had the right to suppose by reason of that report that they were as wide apart as the poles upon that proposition.

Now they propose to strike out one whole page of the Senate bill and insert in lieu thereof a new provision of their own. The gentleman from Pennsylvania [Mr. McFADDEN] very frankly admitted to the House here that differences existed between the conferees and that the main obstacle to an agreement was in subdivision (b) of their amendment. And what is (b)? This is the provision pertaining to money and credits and as to how they should be taxed; the very meat of the coconut; the very thing that was determined in the Richmond bank decision. So that the proposition which gave rise to all this legislation is yet in disagreement between the conferees. If we adopt the motion of the gentleman from Pennsylvania what do we do? We send this bill back to the conferees for them to again go into conference. It will undoubtedly result in a deadlock wherein we will get no legislation.

Now, I do not care to assume that responsibility when I vote upon this proposition. I am not satisfied with the Senate bill, but we must remember that the Senate has agreed to the provisions in the Senate bill. We know it at least will accomplish something. The tax commissioners say so. They should know, for they have given careful thought and study to it. They have stated the case from the standpoint of the public. We know the present parliamentary situation and the difficulties of getting any legislation through if there is further conference. We believe in everyone paying their fair share of the expenses of government in accordance with their ability to pay. Therefore there is but one course to take, and that is to support the Senate bill and vote down the amendment that has been offered by the gentleman from Pennsylvania [Mr. McFADDEN]. [Applause.]

Mr. McFADDEN. Mr. Speaker, will the gentleman yield?

Mr. NEWTON of Minnesota. Yes.

Mr. McFADDEN. What tax is assessed in your State against private individuals on money loaned in your State which comes under the classification of section 5219?

Mr. NEWTON of Minnesota. The tax on national banks in my State is the same as the tax on State banks. Both pay under the provisions of the general property tax. This is based upon a 40 per cent valuation on the real worth and value of the property.

Mr. McFADDEN. What tax is laid on mortgages in your State?

Mr. NEWTON of Minnesota. We have a mortgage tax, which, if I am not mistaken, is 15 cents a hundred. I am not sure about that.

Mr. WINGO. Twenty-five and fifteen. Three mills on moneys and credits.

Mr. NEWTON of Minnesota. Yes; I think the mortgage tax is 15, and there may be some exceptions running it up to 25.

Mr. WINGO. Twenty-five on long and fifteen on short.

Mr. McFADDEN. Is not the trouble you have in Minnesota that you have repealed the tax on money in the hands of private individuals?

Mr. NEWTON of Minnesota. We have done nothing but adopt the kind of legislation that the economists, bankers, and financiers of this country advocated and advised us we should adopt. This included the intangible property tax of 3 mills. There is a 5-mill tax here in the District of Columbia.

Mr. LONDON. Mr. Speaker, will the gentleman yield?

Mr. NEWTON of Minnesota. Yes.

Mr. LONDON. I make the point that it is wrong for the conferees to rewrite the bill.

Mr. NEWTON of Minnesota. Yes; it is simply impossible for the Members of the House here—and I say it with all good feeling—to act with intelligence and understanding upon an amendment which is highly technical which was presented but a moment before its consideration. There is no practical opportunity with the parliamentary situation as it is to fairly consider it and pass upon its merits or demerits. Time to thoroughly examine it might prove it to be even better than the Senate provisions. Naturally, those of us who have fought for this legislation question it when it seems to meet the approval of those who originally said, "We do not want to see section 5219 altered."

In conclusion, the adoption of the Senate amendment means legislation this session. The adoption of the amendment of the conferees means delay, which at this time is almost certain to result in no legislation. No legislation means that this inequality and discrimination growing out of the Richmond case is to continue. It means lawsuits and the probable refunding of millions of dollars, which can only be paid by taking it in

the form of increased taxes from farmers, merchants, manufacturers, State banks, and others who are now obligated to pay under this decision more than their share.

Mr. WINGO. Will the gentleman yield?

Mr. NEWTON of Minnesota. Yes.

Mr. WINGO. In your State you only tax one-quarter per cent after deducting the real estate.

Mr. NEWTON of Minnesota. The real estate belonging to the banks?

Mr. WINGO. You have one tax of 50, another of 25, another of 33, and another of 40. Will the gentleman tell us wherein the House provision will disturb his State in the least?

Mr. NEWTON of Minnesota. I can not tell the gentleman, for I have not had time to more than hurriedly read the provision.

Mr. WINGO. It will not disturb it in the least.

The SPEAKER pro tempore. The time of the gentleman from Minnesota has again expired.

Mr. LUCE. Mr. Speaker, I yield five minutes to the gentleman from Wisconsin [Mr. STAFFORD].

Mr. STAFFORD. Mr. Speaker, a few moments ago the House by its vote deprived Wisconsin of many hundreds of thousands of dollars of income taxes that had been levied on national banks of that State under what they thought they had a right to do under section 5219. Now it is proposed to set up a new rule of taxation so far as the owners of national-bank stock are concerned. Everyone who has the most casual acquaintance with the income tax law of the National Government knows that we have surtaxes. Under this provision you are going to except the owners of national-bank shares from the effect of surtaxes. In Wisconsin we have an income tax State law. Perhaps they have it in New York and Massachusetts. I know something about our State tax law. The owners of shares of stock in private corporations are taxed on income they receive. I have not had the time to scan this amendment as closely as I would like, or perhaps as other Members would like to scan it, but I wish to say to you gentlemen that I know of no bill or any other proposition that was given as careful consideration by the Senate of the United States in this term of Congress as this bill now pending before us.

Senators who are leaders in questions of taxation and financial matters helped to frame this bill that we now have before us. Now, what does the gentleman attempt in his amendment as to one particular? Under the Senate amendment one of three ways that taxes may be levied is by taxing the dividends on taxable income of the owner or holder thereof. The State in its supreme power would have the right to tax the owner of the shares of national-bank stock wherever he might live, but under the amendment proposed by the gentleman from Pennsylvania the shares of national banking associations within its limits only are taxable. That is one difference that I have been able to ascertain in scanning this amendment. No one can deny that the provisions as the Senate enacted the bill safeguarded the interest of every national bank, and did not give the States the right under their provisions to drive national banks out of existence. It did recognize the right of the States to tax, but not to tax it on a different basis than they taxed other business associations. Under this amendment you are going to play favorites. The persons who own shares in a business corporation will be taxed if they live outside of the State, whereas the tax levied on owners of shares of national banks will escape taxation if they live outside the State, because the State under this provision will not be able to tax the shares of the bank stocks or owners of bank stock unless they live within its borders. The shares have to be located within its limits.

Mr. McFADDEN. I think the gentleman misunderstands it. Section (c) states that in case of the tax of the net income it will not be higher than the rate on other financial corporations.

Mr. STAFFORD. Let us see. It says that the several States may tax each share, including dividends derived from the taxable income of the owner and holder thereof. Somewhere in the amendment you limit the tax on shares of associations located within its limits.

Mr. McFADDEN. The gentleman is in error.

Mr. STAFFORD. If the gentleman will give me a minute more, I think I will be able to show that I am right.

The SPEAKER pro tempore. The time of the gentleman from Wisconsin has expired.

Mr. LUCE. Mr. Speaker, I yield 10 minutes to the gentleman from New York [Mr. MILLS.]

Mr. MILLS. Mr. Speaker, it is, of course, utterly impossible to discuss the amendment before the House, because, although I have had the opportunity of reading it once and it is as difficult and technical a section as you can find, there is not a man in the House outside of three who have even seen it. Therefore, how in the name of common sense can we discuss a technical taxation amendment which not only undertakes to limit States as to taxation of national banks, but has literally tied up that limitation with every form of taxation that I can think of, except public-service corporations. They have told you how you can tax national banks in their relation to individuals, whether they be bankers or not, how you can tax national banks in their relation to manufacturing corporations, and they are no more similar than dollars and doughnuts. They are tying your bank-taxing system up to taxation of mercantile associations, and finally, when they come to telling you how to tax individuals, they have picked out certain forms of credits, and they have segregated in one place dividends and in another place bank deposits. I would like to ask the distinguished chairman of the committee in what situation we will find ourselves in New York, in so far as the taxation of bank deposits owned by individuals is concerned, if we were to keep our present tax on national banks?

Mr. McFADDEN. I would say, in answer to the gentleman, that there is a provision in this bill which says that the imposition by said State of any one of the above three forms of taxation shall be in lieu of the others. The gentleman is confusing the three forms for options.

Mr. MILLS. Oh, no. I want to point out to the gentleman that as I read the section you do this. You say, if you propose to tax national banks 1 per cent on their capital stock, you shall tax the bank deposits of individual citizens, whether they be bankers or manufacturers or what not, at 1 per cent.

Mr. WINGO. The gentleman is talking about the Senate provision.

Mr. MILLS. No; I am talking about the provision that I have just read.

Mr. WINGO. That is the Senate provision, and I ask the gentleman to point out in the Senate provision, which is carried in the gentleman's motion, anything that justifies what the gentleman has charged.

Mr. MILLS. I am not talking about the Senate provision, but of the amendment submitted by the gentleman from Pennsylvania.

Mr. WINGO. Which is identical with the addition of three words, "other financial corporation."

Mr. MILLS. No; there is this fundamental difference——

Mr. WINGO. The Members of the House can turn to page 4 and read subdivision (c) if they wish.

Mr. MILLS. I will point out to the gentleman on page 3, subsection (b), and he will find there that the limitation in the case of State tax on said shares is that the rate of taxation shall not be higher than the rate applicable to other moneyed capital employed in the business of banking.

Mr. WINGO. Is that what the gentleman objects to?

Mr. MILLS. I am not objecting to that.

Mr. WINGO. That is not in there.

Mr. MILLS. That is the Senate provision, and you have taken that out and you have gone back to the old Richmond case language, with this exception, that in so far as individual citizens are concerned you have eliminated certain forms of investments; and, mind you, I am speaking from a single reading of this provision.

Mr. WINGO. Oh, the gentleman has gone off on something else.

Mr. MILLS. What happens in the case of a State like New York in so far as bank deposits of individuals are concerned? Do we have to segregate those and tax them at a 1 per cent rate when every other form of investment is taxed at a 3 per cent rate of income?

Mr. WINGO. Why, do anything you please. The gentleman has not stated a line that will justify his statement.

Mr. MILLS. If I can have the amendment of the gentleman from Pennsylvania I think I can justify that.

Mr. WINGO. If the gentleman will take the Senate bill and add to it the three words on (c) he will find that that is the only change in the motion of the gentleman.

Mr. STAFFORD. Oh, there is a much greater change than the gentleman states.

Mr. MILLS. This provision reads as follows:

> In the case of a tax on said shares the tax imposed shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens—

That is the old Richmond language—

> coming into competition with the business of national banks: *Provided*, That bonds, notes, or other evidences of indebtedness in the hands of individual citizens not employed or engaged in the banking or investment business and representing merely personal investment not made in competition with such business shall not be deemed moneyed capital within the meaning of this section.

You have selected certain exceptions, but you have not included bank deposits; and what I want to know is what happens in the case of an income-tax State like New York, where you permit us to tax certain investments at 8 per cent income tax rate. Does that mean that we have to tax bank deposits on a 1 per cent basis if we desire to preserve our 1 per cent tax on the capital stock of national banks?

Mr. WINGO. Why, if the gentleman will read the bill he will know what it is. The gentleman is not asking the question for information. He knows that section (b) as read has to do with the tax shares and not the income provision. Let him read the income provision.

Mr. MILLS. I have been asking in all sincerity, because it is something that occurred to me the first time I read the bill, what will happen to bank deposists in New York, and I am trying to point out to this House the wickedness of passing such an important amendment in an hour's time without opportunity to look at it when the particular legislation has been before this House for two years almost and you have a Senate bill which is at least a fair compromise of all interests understood and ready to be voted on. All I want to do is to voice my solemn protest, not only as an individual but in behalf of my State, that a matter of such vital importance to her should be treated in this manner. [Applause.]

Mr. McFADDEN. How much time have I remaining?

The SPEAKER pro tempore. The gentleman has 15 minutes.

Mr. McFADDEN. I yield 12 minutes to the gentleman from Arkansas [Mr. WINGO].

Mr. WINGO. Mr. Speaker, in the limited time left it will be impossible to cover the entire range of arguments that have been made and correct the erroneous contentions offered against the pending motion, which is to accept the Senate amendment with certain changes. The contentions that have been made show that the Members making them are wholly lacking in information both as to the decisions of the Supreme Court covering this question and the real fundamental difference between the Senate and the House proposals. One of these mistaken contentions is that the House conferees come in here at the last moment and propose an entirely new proposition of their own. Those who have kept up with this controversy and who are familiar with both the House and the Senate provisions realize how absurd and ridiculous such a contention is. Some gentlemen contend that the proposal embodied in the pending motion is a new one that they have never seen before. Such contentions upon the part of these Members indicate that they have not kept up with the consideration of this bill, because there is not a single thing proposed by the House conferees in the pending motion that has not been studied carefully, not alone by the conferees but by the representatives of both the States and the banks, who have been here in Washington pressing their views on this question.

I was very much surprised at the contention, and especially the questions, of the gentleman from New York [Mr. MILLS], because he is one Member who has devoted a great deal of study to this question, and I have great respect for his opinion, but to-day he has evidently become confused. He asked what effect the pending proposal will have on bank deposits. A moment's reflection will no doubt recall to the gentleman's mind that the question of deposits is not involved. Section 5219, as it now stands, and as rewritten in both the Senate and the House bills, covers only the question of taxation of the personal property of individual citizens represented by their moneyed capital invested in the shares of national banks, and does not cover the question of taxation of the banks themselves except upon their real estate. When the gentleman had raised the question he read the provision covering the share tax and then the next moment he shifted his contention to the question of income, when he knows that the income-tax provision is a separate and distinct provision from the one with reference to tax on the shares, and both the Senate amendment and the pending House proposal distinctly and specifically provide that where one form is used it shall be in lieu of the other two forms of taxation.

I have been very much amused, Mr. Speaker, by some of the other gentlemen who have spoken on the bill. They have paid great tribute to what they term the superior wisdom and the infallibility of the Senators and the Senate amendment. They have insisted that the Senate amendment is clear and easily understood and is perfect in all its provisions, and yet they immediately turn around and criticize very severely certain provisions in the proposal of the House conferees offered as a substitute for the Senate amendment, when everyone who has read the Senate amendment knows that every provision which these gentlemen condemn is in the Senate amendment.

I repeat, Mr. Speaker, that the major contentions offered against the proposal which the House conferees now make is based upon a total lack of information not only of the proposal itself but of the Senate amendment. For illustration, the gentleman from Wisconsin [Mr. STAFFORD], who is usually very well informed and is a man of great ability, and on account of his capacity and industry commands the respect of all of us, is either confused or he wholly overlooks the provision of the Senate amendment when he says that shares of national banks owned by persons outside a State will escape taxation. His error is apparent if he will turn to the pending motion and read subdivision 2, which reads as follows:

2. The shares or the net income as above provided of any national banking association owned by nonresidents of any State, or the dividends on such shares owned by such nonresidents, shall be taxed in the taxing districts where the association is located and not elsewhere; and such associations shall make return of such income and pay the tax thereon as agent of such nonresident shareholders.

By reference to subdivision 3 of the Senate amendment you will see that it is identical with subdivision 2 of the pending proposal which I have just read with one exception. That exception is represented by the words in subdivision 2, "or the dividends on such shares owned by such nonresidents." The Senate conferees agreed with the House conferees that such change in the Senate amendment was absolutely necessary or else the very evil which the gentleman from Wisconsin contends would exist in an income-tax State would be permitted; that is, the dividends of a nonresident under the Senate amendment would escape an income tax.

Another contention the gentlemen have made is that the House conferees propose to set up an entirely new rule of taxation of shares of national banks. These gentlemen are mistaken. The Senate amendment and not the House proposal sets up a new rule in the one provision that represents the only real difference between the proposal of the House conferees and the Senate amendment. The House conferees and the Senate conferees differ on only two paragraphs. One is the so-called validating provision which the House has already disposed of. The Senate and the House conferees have agreed on every proposition embodied in the motion of the gentleman from Pennsylvania except paragraph (b) of subdivision 1.

On that question it is the House and the House conferees that protest against a new and untried rule, and it is the Senate that sets up the new untried rule which is certain only in one thing, and that is that it will confirm the private banker in the special privilege that he now enjoys under the laws of some of the States.

Mr. SWEET. Will the gentleman yield?

Mr. WINGO. Yes, sir.

Mr. SWEET. Now, in the time the gentleman has, I wish he would explain the difference between the Senate amendment and the proposed amendment—where they differ.

Mr. WINGO. I was just starting the explanation. The gentleman from Pennsyvania in the beginning of this debate told the House that which I have just told you, that the only difference in the Senate amendment and the substitute offered by the House conferees for it is in paragraph (b). In other words, the Senate and the House conferees have reached an agreement on the following language, which is embodied in the pending substitute:

SEC. 5219. The legislature of each State may determine and direct, subject to the provisions of this section, the manner and place of taxing all the shares of national banking associations located within its limits. The several States may tax said shares or include dividends derived therefrom in the taxable income of an owner or holder thereof, or tax the income of such associations, provided the following conditions are complied with:

1. (a) The imposition by said State of any one of the above three forms of taxation shall be in lieu of the others.

* * * * * * *

(c) In case of a tax on the net income of an association the rate shall not be higher than the rate assessed upon other financial corporations, nor higher than the highest of the rates assessed by the taxing State upon the net income of mercantile, manufacturing, and business corporations doing business within its limits.

(d) In case the dividends derived from the said shares are taxed the tax shall not be at a greater rate than is assessed upon the net income from other moneyed capital.

2. The shares or the net income as above provided of any national banking association owned by nonresidents of any State, or the dividends on such shares owned by such nonresidents, shall be taxed in the taxing districts where the association is located and not elsewhere; and such associations shall make return of such income and pay the tax thereon as agent of such nonresident shareholders.

3. Nothing herein shall be construed to exempt the real property of associations from taxation in any State or in any subdivision thereof to the same extent, according to its value, as other real property is taxed.

I repeat the language which I have just read and which is all of the pending House proposal except paragraph (b) has been agreed to by both the House and Senate conferees. The language which I have just read is the Senate amendment with

certain changes that we have agreed to, though some of the provisions which I have read I do not like but I have yielded to the unanimous judgment of the other conferees. The provisions which I have read and which have been agreed to cover two of the three alternative forms of taxation by the States. One is where the State levies a tax on the net income of the association and the other is where the States tax the dividends received from the shares. That leaves in dispute the rule that shall govern the States when they use the other form of taxation; that is, a share tax upon the shares. By reference to the bill on page 3 you will find subdivision (b) of the Senate amendment on the question of share tax. The proviso which appears in the Senate amendment commencing with line 22 at the bottom of page 3 was admitted by the Senate conferees to be unwise and should be stricken out. With that proviso eliminated by the Senators themselves, the Senate amendment on the question of a share tax is represented by this language: "In the case of a tax imposed by a State or any agency thereof on said shares the rate of taxation shall not be higher than the rate applicable to other *moneyed capital employed in the business of banking within the taxing State.*" As a substitute for that Senate provision the House conferees propose the following language:

(b) In the case of a tax on said shares the tax imposed shall not be at a greater rate than is assessed upon other *moneyed capital in the hands of individual citizens of such State coming into competition with the business of national banks: Provided,* That bonds, notes, or other evidences of indebtedness in the hands of individual citizens not employed or engaged in the banking or investment business and representing merely personal investments not made in competition with such business shall not be deemed moneyed capital within the meaning of this section.

The major difference between these two provisions is represented by the following words in the Senate amendment: "*other moneyed capital employed in the business of banking within the taxing State,*" and the following provision in the House proposal: "*other moneyed capital in the hands of the individual citizens of such State coming into competition with the business of national banks.*"

Broadly speaking, and at first blush, it appears that the only major difference between the two is that in the Senate provision the *character of the business* on which the shares are issued is the basis, while in the House provision the *character of the moneyed capital invested in the shares* is the basis.

But if one studies the decisions of the courts and the interpretation that has been given to the language of each provision and the practical application under such judicial determination he will see that the legal effect is that which is represented by the real difference between the two Houses.

The legal effect of the Senate language measured by all the decisions, including the Richmond decision, would be to legalize the action of those States that impose a higher tax burden upon incorporated State and national banks than they do upon the capital of the individuals engaged in private banking. In other words, the Senate provision confirms the private bankers in their special privilege which they now enjoy under the laws of some of the States.

Upon the other hand, the language employed in the House proposal adheres to the old basic rule which has been given judicial determination by numerous decisions during the last 50 years, which is clear and easily understood, and the chief virtue of which is that while it gives the State the right to tax the moneyed capital invested in a share of national-bank stock to any extent it pleases, yet it protects such capital against the discrimination in favor of the private banker. That is, the House proposal permits the State to tax such capital invested in national-bank stock without limit just so it imposes the same burden upon competing capital employed in private banking.

There is another objection to the Senate provision and that is that it would require the different States to tax savings banks, whereas many of them now exempt such institutions, and the Supreme Court, under the rule laid down in the House provision, has specifically approved the exemption of savings banks.

From what I have said it is demonstrated clearly that the House conferees have not proposed a new, untried rule, as has been charged, but that the Senate provision is the new, untried rule, which is certain to be productive of expensive and long-continued litigation and keep both the States and banks in uncertainty for years.

But some gentlemen say if you have adhered to the old rule, and in your pending proposal you repeat the rule that is laid down in section 5219, you leave the States restricted under the so-called Richmond decision. That contention might have some basis if it were not for two provisions that the House has added to the old rule. The first provision is as follows: "*Coming into competition with the business of national banks.*" The other provision is that which is embodied in the proviso in paragraph (b), which reads as follows:

(b) *Provided, That bonds, notes, or other evidences of indebtedness in the hands of individual citizens not employed or engaged in the banking or investment business and representing merely personal investments not made in competition with such business, shall not be deemed moneyed capital within the meaning of this section.*

In order that the House may understand the effect of these proposals, and especially the two provisions which I have just read, it is necessary to direct your attention to the situation that confronts the States on this question and which called for legislation at this time. On June 6, 1921, the Supreme Court of the United States rendered what is now known as the Richmond decision, being the case of the Merchants' National Bank of Richmond against the city of Richmond. There is considerable difference of opinion among lawyers who have studied this decision as to its effect.

While I have admitted that Justice Pitney in that decision used some language that might be the basis of the contention that it laid down a new rule which overruled the settled rule that had been applied by all the past decisions, yet I have contended that the real trouble with that case was that the attorney for the city of Richmond committed the error of practically admitting the allegations of fact which were practically the substance of the statute. While the city denied the allegations of fact, yet when the bank introduced witnesses who testified not to facts but to a conclusion that bonds, notes, and other evidences of indebtedness coming into competition with national banks were taxed at a lower rate than the shares of National and State banks the city did not introduce any evidence to show that such paper and securities did not as a matter of fact come in substantial competition with the banks. In other words, the city of Richmond might as well have demurred to the petition in the first instance. I think the lawyers of the House will agree to this contention when I read the following language from that decision of the Supreme Court:

It was also shown by evidence *without dispute* that moneyed capital in the hands of individuals invested in bonds, notes, and other evidence of indebtedness comes into competition with the national banks in the loan market.

That is, the court said that in the case at bar the uncontradicted evidence showed other moneyed capital in the hands of individuals coming into competition with the business of national banks was taxed at a lower rate. If that fact existed as stated by the court, then under the law and under all the decisions that went before the tax on the national-bank stock was discriminatory and unlawful. Then instead of the Richmond decision laying down a new rule it as a matter of fact on the main question involved adhered to the old line of decision.

However, we all agree that in view of the uncertainty and the differences of opinion that has been created by this Richmond decision it is wise to restate the law, but the House conferees feel that in our effort to remove the uncertainties thus created we should not add other uncertainties and make the confusion worse confounded, which the Senate provision does. We take the position that it is easy to override the contention of the Richmond case by restating the old rule with such additional language as will show that it is the intention of Congress in the new statute to follow the rule laid down in the old line of decisions which were clearly understood and constituted a settled basis upon which the State taxing power could depend with some degree of certainty. In order to do this the House committee has added the two provisions which I last read to the old settled rule. But you may ask, Will not these two new provisions create uncertainty until they are given judicial determination by the courts? We answer "No," because we get the language of those two provisions from the language used by the courts in many decisions. Thus it will be seen that the House provision as insisted upon by the House conferees clearly overrules the Richmond decision and goes back to the old rule which the States followed for 53 years.

Under the contention in the Richmond case the tax of every State in the Union on national-bank stocks was in danger if such State provided a lower rate on any intangible property, or if, for illustration, any State exempted farm mortgages from taxation. Such exemption of farm mortgages has been held by the old line of decision as not violating the rule laid down in 5219, and by the proviso which the House conferees have put on subdivision (b) we make it clear that moneyed capital invested in farm mortgages, and which is exempt from taxation in many of the States, shall not be deemed moneyed capital within the meaning of this law.

The position of the House conferees in this whole controversy has been to overcome the contention of the Richmond case by restating the law in clear, unequivocal language, yet using the old settled rule. We have at all times sought to give to the States an unlimited permission to exercise their taxing power on capital invested in national banks with one restriction only, and that is the simple, honest limitation that in the exercise of that taxing power the States shall not destroy the national banks by discriminating in favor of the capital of private bankers that compete with the National and State banks. The position of the House conferees is: Let any State tax banking capital to any extent it wishes, just so it makes the burden equal on all banking capital.

Mr. GRIFFIN. Mr. Speaker, I understand the gentleman to say that the Senate amendment discriminates in favor of the private banker.

Mr. WINGO. Yes.

Mr. GRIFFIN. On page 3 of the bill I call your attention to this language: That the rate of taxation shall not be higher than the rate applicable to other moneyed capital employed in the business of banking within the taxing State.

Mr. WINGO. Why, the gentleman is a lawyer; and if he has studied this question and followed the contention made by the attorneys in the New York and Massachusetts cases, especially the latter, he knows that it has been the contention that capital invested in private banking does not come under the rule stated in the language he referred to. Their contention is that the private bank or partnership has no working capital other than the balances left on deposit with them by their customers and moneys loaned by the individual members of the partnership to the partnership. They contend that the note of the partnership given to the individual partner for the money thus loaned is not moneyed capital in the hands of the individual coming in competition with the business of national banks. But the courts have held otherwise, and it is sought by the Senate provision to change the rule from one based on "*moneyed capital in the hands of individual citizens coming into competition with the business of banks*" to the rule of "*moneyed capital employed in the business of banking.*"

Under the latter rule it is admitted by all lawyers who have studied the question, and it is the contention of the attorneys themselves in these cases, that the notes given by private banking partnerships for the moneys advanced by way of working capital by the individual members of the firm will take such securities out from under the antidiscriminatory provisions of the law; in other words, that the State might tax such capital at a lower rate than national-bank shares without falling under the ban of the Federal statute. If the gentleman will look into the history of these cases, he will find that in the Boston case the contention that the capital employed in private banking was wrongfully taxed at a lower rate than the capital invested in national banks was sought to be met by putting on the witness stand a member of one of the well-known private banking firms of the city of Boston, who testified that the firm got its capital funds by loans made to the firm by the individual members, and it was contended that such loans were purely personal loans and did not come within the scope of section 5219. In other words, it was contended in that case that section 5219 should be interpreted so as to mean what the Senate provision now sets up; and I charge that it was the specific intention of the person who framed the Senate provision on this question to permit the States of New York and Massachusetts to continue their special privilege to the private bankers by imposing upon National and State bankers a heavier tax burden than they impose on the private bankers.

Are gentlemen surprised that the State and National bankers of the United States protest against such a discrimination? Are these State and national bankers to be condemned because they appeal to you not to grant this special privilege to their competitors? No, gentlemen, the thing to be condemned is not the protest of these bankers, which you have heard criticized to-day, but the thing to condemn is the vicious effort to show a special favor to these great private banking houses. There is another reason why the banks of the country are very much disturbed, and that is that a new and untried rule will be productive of great litigation that will prove expensive not alone to the States but to the banks themselves, because it is admitted that whenever these banks go into court they have to pay their lawyers well.

Gentlemen, the way is very clear. The Senate offers you a new and untried rule, the effect of which is certain only in one particular, and that is the special privilege that it grants to the private banker. As a substitute for that your House conferees offer you a tried simple rule that is well settled by a long line of judicial decisions, with such additions to it as will clearly and unequivocally overrule the Richmond decision, leaving the States free, as they were for 50 years before that decision, to tax capital invested in national banking to any extent they please, just so they impose the same burden upon other moneyed capital that competes with such banks. [Applause.]

Mr. McFADDEN. Mr. Speaker, I do not desire to use any additional time. I understand that the vote is on my amendment to concur with an amendment. I move the previous question.

The previous question was ordered.

The SPEAKER pro tempore. The question is on the motion to recede.

The question was taken, and the motion to recede was agreed to.

The SPEAKER pro tempore. The question recurs on the motion of the gentleman from Pennsylvania to concur with an amendment.

The question was taken; and on a division (demanded by Mr. NEWTON of Minnesota and Mr. STAFFORD) there were 95 ayes and 32 noes.

So the motion of Mr. McFADDEN was agreed to.

The SPEAKER pro tempore. Without objection, the Clerk will renumber the paragraph. Is there objection?

There was no objection.

Mr. STEVENSON, Mr. NEWTON of Minnesota, Mr. DALE, Mr. HILL, Mr. HUSTED, Mr. McFADDEN, Mr. MONDELL, Mr. STRONG of Kansas, and Mr. BLANTON were given leave to extend their remarks in the RECORD.

THE SO-CALLED SURPLUS ALLEGED TO BE DUE THE DISTRICT OF COLUMBIA.

Mr. BLANTON. Mr. Speaker, I have secured unanimous consent to extend my remarks in the RECORD in order to discuss the so-called surplus alleged to be due the District of Columbia by the United States Government.

I have given this subject careful consideration during the past six years, and in my candid opinion the so-called surplus of $4,438,154.92 alleged to be due by the United States Government to the District of Columbia is a myth, a sham, and a fraud attempted to be perpetrated upon the joint select committee—all splendid gentlemen—upon Congress, and upon the Government by certain avaricious citizens of Washington, which, if permitted, would constitute a shameful outrage that borders almost upon a crime against the patient, long-suffering people of our Nation.

The present Washington, now designated as the District of Columbia, is a city of approximately 450,000 people. About 350,000 of these people have no connection whatever with the Government, but live in Washington because of its beauties, its conveniences, its advantages, and its ridiculously low tax rate. The present tax rate in Washington on personal and real property is only $1.30 on the $100, which embraces all taxes residents have to pay, which is less than the taxes paid by any resident in any of the 48 States of this Union. The reason that residents in Washington, D. C., are required to pay only $1.30 on the $100 in taxes is because all of the balance of the expenses of the city is paid by the Government of the United States. No other city in the United States is thus so fortunate. No other city in the United States has such a low tax rate. Every other city in the United States pays from two to three times as much tax as do the people of Washington. All of our constituents in the various States back home, besides having to pay their own State, county, municipal, and school taxes, are required to help the 450,000 people in Washington pay their local taxes here. Residents of Washington are thus parasites upon the people in every one of the 48 States of this Union. Washington is gradually becoming the Mecca for rich tax dodgers from all over the United States.

From 1878 to 1921, 50 per cent of all of the expenses of this great city has been paid by the United States Government, including its many magnificent school plants, free schoolbooks, salaries of teachers, officers, and school employees, truant officers, and maintenance of schools, its street and alley paving, its street, alley, and driveway lights, street and alley cleaning, garbage, ash, and trash removal, sewerage, water system, parking system, police and fire protection, construction of expensive bridges and municipal buildings, its city courts, jails, asylums, libraries, public playgrounds and amusement parks, bathing pools, and many other civic improvements too numerous to mention. Since 1921 this proportional expense has been reduced to a 60–40 basis.

Under this fiscal relation since 1878, as the District of Columbia collected its taxes and other revenues, such as fines, licenses, and so forth, it has deposited same in the United States Treasury, knowing that out of such Treasury the Congress would appropriate the full amount of money needed to pay all of its

expenses. And Congress has made such appropriations each year from the Treasury of the United States.

But because certain avaricious residents of the District of Columbia, who are now not satisfied even with the low tax rate of $1.30 on the $100, made possible because the whole people of the United States are paying the balance of their expenses, have so juggled certain years that the aggregate of the deposits for same made by the District of Columbia exceeds one-half of the appropriations made by Congress during those particular years carried in the District appropriation bills, and because such excess aggregates between four and five million dollars they now claim that it now constitutes a surplus which should be credited to the District of Columbia, so that the residents may have the benefit of it in a further reduction of their already ridiculously low taxation.

Such claim of surplus is ridiculous. Since 1878 many improvements and various projects for civic conveniences and beautifying Washington have been paid for wholly by the United States Government, carried in various departmental appropriation bills. And in many instances since 1878, when making its deposits, the District of Columbia has taken full credit for revenues, fines, and licenses, produced through overhead paid by the Government, when half of the same should have gone to the credit of the Government. And the District of Columbia has not been charged with large sums of interest which the Government has paid on obligations funded before 1878 for which the Government was in no way responsible.

When the claim for this so-called surplus was made Congress passed the act of June 29, 1922, which provided:

A joint select committee, composed of three Senators, to be appointed by the President of the Senate, and three Representatives, to be appointed by the Speaker of the House of Representatives, is created, and is authorized and directed to inquire into all matters pertaining to the fiscal relations between the District of Columbia and the United States since July 1, 1874, with a view of ascertaining and reporting to Congress what sums have been expended by the United States and by the District of Columbia, respectively, whether for the purpose of maintaining, upbuilding, or beautifying the said District, or for the purpose of conducting its government or its governmental activities and agencies, or for the furnishing of conveniences, comforts, and necessities to the people of said District. Neither the cost of construction nor of maintenance of any building erected or owned by the United States for the purpose of transacting therein the business of the Government of the United States shall be considered by said committee. And in event any money may be or at any time has been by Congress or otherwise found due, either legally or morally, from the one to the other, on account of loans, advancements, or improvements made, upon which interest has not been paid by either to the other, then such sums as have been or may be found due from one to the other shall be considered as bearing interest at the rate of 3 per cent per annum from the time when the principal should, either legally or morally, have been paid until actually paid. And the committee shall also ascertain and report what surplus, if any, the District of Columbia has to its credit on the books of the Treasury of the United States which has been acquired by taxation or from licenses. And the said committee shall report its findings relative to all the matters hereby referred to it to the Senate and House, respectively, on or before the first Monday in February, 1923.

And on February 5, 1923, after spending nearly $20,000, the majority of the above special select committee, all of whom are splendid gentlemen, filed their report showing that they had made only—

a detailed audit and examination of the District accounts from June 30, 1911, to June 30, 1922—

whereas, in said act creating said special select committee Congress provided that said committee—

is authorized and directed to inquire into all matters pertaining to the fiscal relations between the District of Columbia and the United States since July 1, 1874.

In explaining why they did not comply with the above direction and go back to 1874, instead of limiting their audit and examination to the short period between June 30, 1911, to June 30, 1922, the majority in their report said:

It would have been necessary to ask the Congress for a year's additional time, at least, within which to make a final report, and an additional appropriation of many thousand dollars.

So without covering the years Congress directed them to audit and examine, the majority of the committee recommended that Congress credit the District of Columbia with the huge sum of $4,438,154.92 out of the Public Treasury of the whole people of the United States.

The majority of the committee wholly disregarded the following direction given them by Congress:

A joint select committee * * * is directed to inquire into all matters pertaining to the fiscal relations between the District of Columbia and the United States since July 1, 1874, with a view of ascertaining and reporting to Congress what sums have been expended by the United States and by the District of Columbia, respectively, whether for the purpose of maintaining, upbuilding, or beautifying the said District, or for the purpose of conducting its government or its governmental activities and agencies, or for the furnishing of conveniences, comforts, and necessities to the people of said District.

The committee called only two other Members of the House before it in its very limited and superficial hearings, they being the gentleman from Michigan [Mr. CRAMTON] and the gentleman from Kentucky [Mr. JOHNSON], both of whom insisted on the above direction by Congress being followed, and both of whom stood out against said alleged surplus being allowed.

Mr. Daniel J. Donovan, auditor of the District of Columbia, testified before the joint select committee (p. 187) that in 1874 the District of Columbia was bankrupt, with a public debt of $27,000,000, and that from 1874 to 1878 Congress appropriated each year $1,400,000 to assist the municipality in paying the District expenses, and that in addition to the above Congress also made certain loans to assist the District in paying its interest on the funded debt and for other District expenses.

Based upon the findings of accountants, a committee headed by the gentleman from Kentucky [Mr. JOHNSON] reported to the House of Representatives in 1915 that on two items alone the District of Columbia was then indebted to the United States Government in the sum of $461,508.06.

After the organic act of 1878 Congress authorized the District to issue, and it did issue, bonds to the extent of $1,092,300 to fund the balance of an old indebtedness, but such act provided that the United States should not be obligated for either interest, principal, or any part thereof. Yet, thereafter, the United States Government paid 50 per cent of both the principal and interest due on such indebtedness.

The distinguished gentleman from Nebraska [Mr. EVANS], a member of said joint select committee, at the time the majority determined upon its report, gave notice that he would file a minority report against said alleged surplus, and that he would contend that such committee had not carried out the instructions of Congress in that they had required an audit only for the period between June 30, 1911, to June 30, 1922, while Congress had instructed them to require the audit from July 1, 1874, to date, and further because such committee had ignored the instructions of Congress that such committee should take into consideration the sums of money spent by the United States Government—

for the purpose of maintaining, upbuilding, or beautifying the said District, or for the purpose of conducting its government or its governmental activities and agencies, or for the furnishing of conveniences, comforts, and necessities to the people of said District.

Let me mention just a few of the many, many items embraced in the above: The various bridges across the Anacostia and Potomac Rivers, including the new Francis Scott Key Bridge, just completed at a cost of nearly $3,000,000; the million-dollar bridge on Connecticut Avenue; the Congressional Library, built at a cost of $6,871,556, and which has been maintained at a tremendous annual cost by the Government; the beautiful Lincoln Memorial, erected at a cost of $3,016,628, which very appropriately could have been built at two other places in the United States; the beautiful reflecting pool in front of the memorial, which so far has cost $509,069; the basin and bathing beach; the $6,000,000 spent by the Government for the land dedicated for the use of a terminal station, a convenience to every citizen of Washington; the magnificent Western High School, the $1,500,000 Central High School, the $2,000,000 Eastern High School, the Tech High School, the Business High School, the Dunbar High School, the Armstrong Manual Training School, the Howard University, and the numerous graded school plants all over the District, maintained for the convenience and benefit of the people of Washington.

Also could be mentioned the Botanic Garden, the Zoo Park, Rock Creek Park, Potomac Park, the cricket and polo grounds, the numerous public tennis courts, the municipal clubhouse and golf courses, the bridal paths for horseback riders, the public vegetable garden plats along Potomac driveway, the Navy Band, and the United States Marine Band, giving public concerts each week during seasonable months, and maintained at Government expense, and a pay roll of nearly 100,000 Government employees who regularly receive every two weeks their pay envelopes containing new money that is to be first spent in Washington. The above conveniences and benefits have caused Washington to grow from a village to a prosperous city of about 450,000 people.

The House Committee on the District of Columbia was called to meet at 10.30 o'clock a. m. on Wednesday, February 21, 1923. The committee has 21 members. The presence of 11 members is required to make a quorum. When the committee was called to order at 10.40 a. m., only eight members were present, to wit: Chairman FOCHT, ZIHLMAN, WALTERS, SPROUL, BLANTON, GILBERT, HAMMER, and O'BRIEN. After passing on routine matters, the committee conducted a hearing on the proposed legislation to extend the time for evicting alley residents, hearing the testimony of several witnesses. At 10 minutes before noon, the business of said committee apparently having been concluded, as members were then circulating a eulogy on the

chairman, the writer stated that he would have to leave, in order to be in the House when a conference report was to be taken up.

Concerning what transpired thereafter, the press reports that a motion was made to report the alley bill, but was withdrawn when a Member made the point of no quorum and then, upon motion of the gentleman from Maryland [Mr. ZIHLMAN], the few Members present ordered a favorable report on the Hardy bill (H. R. 14372), to credit said alleged surplus to the District of Columbia. At that time there was no quorum present, and said committee was sitting and acting without authority, for the House of Representatives has never granted authority to said Committee on the District of Columbia to sit during the sessions of the House. The gentleman from Kentucky [Mr. GILBERT] voted against reporting said bill. Such bill has never been considered by said committee. No hearing whatever was had on same by said committee. None of the few members of said committee present had read even the majority report of said special select committee. None of them had conferred with the gentleman from Nebraska [Mr. EVANS] concerning the minority report he was going to file against said alleged surplus. The only excuse given for reporting out said bill without hearing or consideration was the statement of the gentleman from Maryland [Mr. ZIHLMAN] that he had promised the gentleman from Colorado [Mr. HARDY] to report it out. This ridiculous half-page report shows that an amendment in the Senate is pending to attach this $4,438,154.92 unjust legislation upon the deficiency bill which this House to-day is reading under the five-minute rule. The evident intention is to pass it without debate. These gentlemen do not understand that that surplus claim is wholly without merit.

Only day before yesterday the gentleman from Nebraska [Mr. EVANS] procured permission to print his minority report and same has appeared on pages 4570–4580 of the CONGRESSIONAL RECORD. The membership of the House have not yet had time even to read it, much less to study it. Let me call attention to just one section from Congressman EVANS'S report:

THE FINDING BY THE MAJORITY OF A SURPLUS OF $4,438,154.92 AS DUE TO THE DISTRICT OF COLUMBIA IS NOT SUPPORTED BY FACTS OR LAW.

In order that there shall be a surplus in favor of the District in the Treasury of the United States under the law, it must appear that all accounts between the District and the Government from June 30, 1874, to June 30, 1922, have been audited and that the balance sheet covering that entire period shows such balance.

THE MAJORITY DID NOT SO FIND THE SURPLUS THEY REPORT.

The only period that has been covered by the majority audit is that between June 30, 1911, and June 30, 1922. The only account covered in that period is that of the District general fund. Other funds or appropriations not contained in the District appropriation acts have not been checked or audited except as to specific items, and as to the period preceding June 30, 1911, there is only the guess that it is as found by the Mayes audit, of whom it is established that they only completely checked the District general fund.

To arrive at the conclusions presented by the majority it was compelled to violate the ordinary canons of construction in construing the acts of Congress and to disregard the directions of the act of June 29, 1922, under which it was supposed to act.

In arriving at its conclusions the majority omitted from consideration the following items for the Government:

One-half of the 5–20 bonds.

One-half of the interest on the 5–20 bonds.

Interest on all items of advances or credits upon which interest has not been paid.

One-half of the fines of the police court for the Government.

One-half of the $5,000 appropriation to buy land for the National Training School for Girls, which it seems has been expended, but no land bought.

One-half of the salaries of Army officers who work only for the District.

And for the District the majority omitted the following items:

One-half of the fines and fees in the supreme court of the District.

One-half of the unlawfully paid premiums on the 3.65 bonds.

Interest on these items, not to mention the millions referred to by the District auditor and Mr. Colladay, the representative of the Joint Citizens' Association.

To the above there should be added whatever changes an audit of all other matters not audited might disclose. The interest item alone on known changes shows a credit to the United States of $1,691,889.83, as shown by the majority report.

The 5–20 bonds show a credit of over a million for the Government, and interest from the dates of payment should be added.

There are many other items not included in the foregoing which are known to a limited number of persons, which, when properly inquired into, will doubtless disclose other large sums that have gone from the Treasury to the benefit of the District.

As recently said by the gentleman from Connecticut [Mr. TILSON], nothing is ever settled until it is settled right. The special select committee admits that there is no law for allowing this alleged surplus to the District of Columbia, but bases its action wholly upon equity. Equity requires that one seeking equity must come in with clean hands. Also it requires that one seeking equity must first do equity. Has the District of Columbia come with clean hands? Has it done equity? No; and it can not so long as its citizens pay a tax rate of only $1.30 on the $100 and the people of the United States pay the balance of their expenses.

The tax rate here in the District must be increased at least to 3 per cent. And there must be a fuller rendition. I can cite over 100 pieces of valuable big-income paying property here where same is rendered for taxes at only about one-half of its present value. Why should the whole people pay 50 per cent of Washington people's expenses, from 1878 to 1921, of the salaries of the 2,500 school-teachers and school employees here to teach the 66,000 children of Washington? Why should our constituents pay for constructing school buildings here? Why should they pay for paving streets and alleys in the rich residence sections, and for removing their garbage, ashes, and trash, and for lighting their streets and protecting them with police and firemen? This is the question that must be answered, and answered right. This so-called surplus claim should be defeated.

RED RIVER OIL LANDS, OKLAHOMA.

Mr. SNELL. Mr. Speaker, I present a privileged report from the Committee on Rules.

Mr. BLANTON. Mr. Speaker, I make the point that there is no quorum present. The gentleman is going to waste a lot of time on this bill.

Mr. SNELL. We have got to waste time somewhere. If the gentleman chooses to make the point of no quorum, he can make it. I have consulted several Members, Members on the other side, and this bill can be amended if the House wishes.

Mr. BLANTON. The gentleman says the bill can be amended?

Mr. SNELL. Yes.

Mr. BLANTON. Mr. Speaker, I withdraw my point of no quorum.

The Clerk read as follows:

House Resolution 542.

Resolved, That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the state of the Union for the consideration of the bill (S. 4197) entitled "An act to authorize the Secretary of the Interior to issue to certain persons and certain corporations permits to explore, or leases of, certain lands that lie south of the medial line of the main channel of Red River, in Oklahoma, and for other purposes." After general debate, which shall continue not to exceed 30 minutes, to be equally divided and controlled between those for and against the bill, the bill shall be read for amendment under the five-minute rule. At the conclusion of such consideration the committee shall rise and report the bill to the House with such amendments as may have been adopted and the previous question shall be considered ordered on the bill to final passage without intervening motion except one motion to recommit. The provisions of the bill shall be considered without the intervention of a point of order.

Mr. SNELL. Mr. Speaker, this bill fully explains itself. It is for the purpose of taking care of certain corporations or certain individuals who have drilled oil wells in the bed of the Red River. It was thought at the time that they drilled these wells that that land was subject to entry the same as other land under the placer act, but by a decision of the Supreme Court the bed of the Red River has been excluded. They have held that it does not come under the general act, and so these people are in no man's land, no one controls it. Unless you have some special legislation along this line there is no way to take care of the individual interests or the Government's interest in that valuable oil property. It is for the purpose of conserving private interests and the Government's interests that this bill is brought forward and asked to be considered by the House.

Mr. LONDON. How are the Government interests preserved by this bill?

Mr. SNELL. In the first place, the Government owns 12½ per cent of the oil under this land or in it, and unless the oil is taken out the Government will not get its share, but it will be drawn out by wells now being pumped on the other side of the line.

Mr. ALMON. Mr. Speaker, will the gentleman yield?

Mr. SNELL. Yes.

Mr. ALMON. Will the gentleman indicate to us about when the Rules Committee will report out the Senate resolution authorizing the Government to purchase $10,000,000 of Chilean nitrates and calcium arsenate and sell it to the farmers, which was unanimously reported by the Rules Committee?

Mr. SNELL. I can not say at this time, Mr. Speaker. I move the previous question on the resolution.

The previous question was ordered.

The SPEAKER pro tempore. The question is on agreeing to the resolution.

The resolution was agreed to.

Mr. SINNOTT. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the state of the Union for the consideration of the bill S. 4197, to authorize

the Secretary of the Interior to issue to certain persons and certain corporations permits to explore or leases of certain lands that lie south of the medial line of the main channel of the Red River, in Oklahoma, and for other purposes.

Mr. GRIFFIN. Mr. Speaker, a parliamentary inquiry. Does the rule provide for the division of time between those in favor and those opposed?

The SPEAKER pro tempore. It does.

Mr. GRIFFIN. May I ask who is to have charge of the time in opposition?

The SPEAKER pro tempore. That arrangement has not yet been made.

Mr. RAKER. Mr. Speaker, I have adverse views on the bill, and as a member of the committee I think I should be recognized to control the time in opposition.

The SPEAKER pro tempore. The gentleman from California would be entitled as a member of the committee, being opposed to the bill, to control the time in opposition thereto.

Mr. GRIFFIN. But the gentleman does not say that he is opposed to the bill. I contend that no man ought to take charge of the time unless he is opposed to the bill.

The SPEAKER pro tempore. Who shall control the time is a matter that can be determined in the committee. The question is on the motion of the gentleman from Oregon.

The motion was agreed to.

Accordingly the House resolved itself into the Committee of the Whole House on the state of the Union for the consideration of the bill S. 4197, with Mr. HUSTED in the chair.

Mr. SINNOTT. Mr. Chairman, I ask unanimous consent that the first reading of the bill be dispensed with.

The CHAIRMAN. Is there objection?

Mr. GRIFFIN. Mr. Chairman, I object.

The CHAIRMAN. The Clerk will report the bill.

The Clerk read the bill, as follows:

Be it enacted, etc., That the Secretary of the Interior is hereby authorized to adjust and determine the equitable claims of citizens of the United States, and domestic corporations to lands and oil and gas deposits belonging to the United States and situated south of the medial line of the main channel of Red River, Okla., which lands were claimed and possessed in good faith by such citizens or corporations, or their predecessors in interest, prior to January 1, 1920, and upon which lands expenditures were made in good faith and with reasonable diligence in an effort to discover or develop oil or gas. And the Secretary of the Interior is further authorized to issue to those persons or corporations that may be found equitably entitled thereto permits to explore, or leases of, said lands so claimed by them.

SEC. 2. That applications for permits and leases under this act shall be made to the Secretary of the Interior, and shall be made within and not after 30 days from and after the date that this act becomes a law. Leases and permits under this act shall be granted to the assignees or successors in interest of the original locators or the original claimants in all cases where the original locators or original claimants have assigned or transferred their rights, but when leases or permits are granted to the assignees or successors in interest of the original locators or original claimants the said leases and permits shall be subject to all contracts, not contrary to law or public policy, between the original locators or original claimants and their successors in interest, which the lessee or permittee assumes and agrees to observe. In every case where there shall be any conflict or contest on account of overlapping claims the said conflict or contest shall be determined upon competent evidence, and in every such case the land in conflict shall be granted to the person or corporation that in good faith first possessed and claimed the land and maintained such possession until dispossessed by judicial process or otherwise, having made expenditures thereon as in section 1 required.

SEC. 3. That not more than 160 acres shall be granted by leases or permits to any one person or corporation, except in those cases where two or more locations or claims have been assigned to one person or corporation, and in such cases not more than 640 acres shall be granted by leases or permits to any one person or corporation.

SEC. 4. That each lessee shall be required to pay to the United States an amount equal to the value at the time of production of 12½ per cent of all oil and gas produced by him prior to the issuance of the lease, except oil or gas used on the property for production purposes or unavoidably lost; and shall be required to pay to the United States a royalty of not less than 12½ per cent of all oil and gas produced by him after the issuance of the lease, except oil and gas used on the property for production purposes or unavoidably lost. Of the proceeds of the oil and gas that have been produced or that may hereafter be produced by the receiver of said property, who was appointed by the Supreme Court of the United States, after deducting one-half of the cost of the said receivership but not including the cost of drilling and operating the wells, 12½ per cent shall be paid to the United States, and the residue shall be paid to the person or corporation to whom may be granted a lease of the land on which said oil and gas were produced: *Provided*, That the Secretary of the Interior is authorized and directed to take such legal steps as may be necessary and proper to collect from any person or persons who shall not be awarded a permit or lease under this act an amount equal to the value of all oil and gas produced by him or them from any of said lands prior to the inclusion of said property in the receivership, except oil or gas used on the property for production purposes or unavoidably lost and except other reasonable and proper allowances for the expenses of production: *Provided further*, That of the amount so collected, 12½ per cent shall be reserved to the United States as royalty and the balance after deducting the expense of collection shall be paid over to the person or persons awarded permits or leases under this act, as their interests may appear.

SEC. 5. That except as otherwise provided herein the applicable provisions of the act of Congress approved February 25, 1920, entitled "An act to permit the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain," shall apply to the leases and permits granted hereunder, including the provisions of sections 35 and 36 of said act relating to the disposition of royalties: *Provided*, That after the adjudication and disposition of all applications under this act any lands and deposits remaining unappropriated and undisposed of shall, after date fixed by order of the Secretary of the Interior, be disposed of in accordance with the provisions of said act of February 25, 1920: *Provided further*, That upon the approval of this act the Secretary of the Interior is authorized to take over and operate existing wells on any of such lands pending the final disposition of applications for leases and permits, and to utilize and expend in connection with such administration and operation so much as may be necessary of moneys heretofore impounded from past production or hereafter produced, and upon final disposition of applications for and the issuance of leases and permits, after deducting the expenses of administration and operation and payment to the United States of the royalty herein provided, to pay the balance remaining to the person or company entitled thereto: *And provided further*, That out of the 10 per cent of money hereafter received from royalties and rentals under the provisions of this act and paid into the Treasury of the United States and credited to miscellaneous receipts, as provided by section 35 of the said act of February 25, 1920, the Secretary of the Interior is authorized to use and expend such portion as may be required to pay the expense of administration and supervision over leases and permits and the products thereof.

SEC. 6. That nothing in this act shall be construed to interfere with the possession by the Supreme Court of the United States, through its receiver or receivers, of any part of the lands described in section 1 of this act, nor to authorize the Secretary of the Interior to dispose of any of said lands or oil or gas deposits involved in litigation now pending in the Supreme Court of the United States, until the final disposition of said proceeding. The authority herein granted to the Secretary of the Interior, to take over and operate oil wells on said lands, shall not become effective until the said lands shall be, by the Supreme Court of the United States, discharged from its possession. And nothing in this act shall be construed to interfere with the jurisdiction, power, and authority of the Supreme Court of the United States to adjudicate claims against its said receiver, to direct the payment of such claims against the said receiver as may be allowed by the said court, to settle the said receiver's accounts, and to continue the receivership until, in due and orderly course, the same may be brought to an end. The Supreme Court of the United States is hereby authorized, upon the termination of the said receivership, which the Attorney General is hereby directed to apply for and secure at the earliest practicable date, to direct its receiver to pay to the Secretary of the Interior all funds that may at that time remain in the hands of the said receiver; and when said funds shall be paid to the Secretary of the Interior the same shall be administered as in this act provided.

SEC. 7. That the Secretary of the Interior is authorized to prescribe the necessary and proper rules and regulations and to do any and all things necessary to carry out and accomplish the purposes of this act.

With the following committee amendments:

Page 1, line 10, strike out "January 1, 1920," and insert "February 25, 1920."

Page 2, line 3, after the word "gas," strike out all of the remainder of line 3 and all of lines 4, 5, and 6 and insert in lieu thereof the following: "By issuance of permits or leases to those found equitably entitled thereto."

Page 2, line 11, strike out the word "thirty" and insert the word "sixty."

Page 2, line 13, strike out the word "shall" and insert the word "may."

Page 2, strike out all of lines 22, 23, 24, 25, and on page 3 all of lines 1, 2, 3, 4, and 5, and insert in lieu thereof: "In case of conflicting claimants for permits or leases under this act, the Secretary of the Interior is authorized to grant permits or leases to one or more of them as shall be deemed just."

Page 3, line 16, after the word "pay," insert the words "as royalty."

Page 4, line 2, after the word "property," strike out the words "who was," and on line 3, after the word "States," strike out the words "after deducting one-half of the cost of the said receivership, but not including the cost of drilling and operating the well."

Page 4, at the beginning of line 6 insert the words "as royalty."

Page 4, line 6, after the word "residue," insert "after deducting and paying the expenses of the litigation incurred by the United States and the expenses of the receivership."

Mr. SINNOTT. Mr. Chairman, I yield one minute to the gentleman from Wyoming [Mr. MONDELL].

Mr. MONDELL. Mr. Chairman, this is an important bill, but it is a measure that I think is very well understood by many Members of the House. There should be sufficient debate under the five-minute rule in order that the bill may be thoroughly understood, but I think that can all be accomplished and we can dispose of the matter within an hour and a half at the latest. I hope the gentlemen will remain. We must conclude the consideration of this bill to-night.

Mr. BUTLER. May I ask the gentleman whether it is proposed that we shall stay any longer than is necessary to conclude this bill?

Mr. MONDELL. Personally, I should be willing to remain longer, but I do not know how the House will feel about that.

Mr. SINNOTT. Mr. Chairman, this bill, as the gentleman from Wyoming [Mr. MONDELL] has stated, is a very important measure. It is very important both from the viewpoint of the Government and the viewpoint of the various parties interested. The oil land involved is now in the hands of a receiver. The receiver has received some $90,000 in salary since April, 1920, and the attorney's fees, in addition to that salary, make the receivership and the attorney fees amount to something like $149,000. In addition thereto the other expenses of the receivership are running on from day to day. In these lands in the river bed of this river between the south boundary of the

river, which is the southern boundary of the lands involved, and the adjacent lands in the State of Texas, there are a great many oil wells. The oil derricks in the territory make the country look like a scorched forest. This land is being drained, and it is important that this case be adjusted and receivership terminated, so that the Government may receive the royalties for the oil production and the parties interested, who in absolute good faith, according to the opinion of the committee—these men who in absolute good faith went upon this oil land and at great expense, one company having spent something like $120,000 and another company having spent something like $110,000 or $112,000 in developing these oil lands, should have an equitable distribution of the proceeds and should have allotted to them a share of the land. Now, the committee in adjusting the controversies between the conflicting claimants did not follow the provisions of the Senate bill.

The committee rather followed the provisions of the oil leasing act which was approved February 25, 1920. Many Members of the House will remember the long-extended controversy, lasting something over six years, as to proper adjustment of the oil controversy relating to the Government-withdrawn lands in the State of California and in the State of Wyoming. After six years' consideration of that question we passed an act on February 25, 1920, and the committee in adjusting these controversies has followed as closely as the different situations permit the provisions of the oil leasing act, which has proven to be a very satisfactory act. Instead of following the Senate provision, which provided that the lands in controversy should be given to the owner first upon the land, we took the provision from the oil leasing act and provided that in case of conflict between claims for permits or leases under this act the Secretary of the Interior is authorized to grant permits or leases to one or more of them as shall be deemed just. We feel that is a fair provision, and that will give all the interested parties an opportunity to present their equitable claims to the Secretary of the Interior, who has adjusted many such claims under this identical language taken from the oil leasing act. We feel that we give every man his day in court and an opportunity to have his claims equitably adjusted.

Mr. LANHAM. Will the gentleman yield?

Mr. SINNOTT. I will.

Mr. LANHAM. Will the gentleman kindly state for the information of the committee the area of the land in conflict which is oil producing?

Mr. SINNOTT. Well, the entire area on the river is possibly 43 miles in length. Now, the oil production really take place within an area of about 1,000 acres, but on this area outside of the 1,000 acres there are a great many claims and a great many conflicting issues, but whether that is really oil land to any considerable extent has not been demonstrated. Now, I do not believe I shall make any further statement at this time.

Mr. ALMON. Will the gentleman state very briefly, I have not read the report, what about the receivership?

Mr. SINNOTT. After the placer locators had discovered oil, claims were set up by riparian owners to the north, also claims were made to the land in question by parties who had permits or licenses from the State of Texas. Then a controversy arose as to the boundary line between the State of Texas and the State of Oklahoma. The State of Oklahoma claimed that the southern bank of the river was a boundary line. It was decided by the Supreme Court in 1896 that the southern bank of the river was the boundary line between the two States. The State of Texas claimed that that decision did not so decide, that it was obiter, and the State of Texas claimed to the middle of the river. Then the State of Oklahoma commenced a suit before the Supreme Court of the United States against Texas to determine the boundary. The Government of the United States intervened. Then afterwards these placer-oil claimants, various oil claimants, intervened in the suit.

Mr. SUMNERS of Texas. Will the gentleman yield?

Mr SINNOTT. I will.

Mr. SUMNERS of Texas. The gentleman spoke of the discovery of oil on this territory by placer miners. Is it not a fact the oil was being developed within a few miles of this territory at the time the placer-mine claims were filed on this particular property in dispute?

Mr. SINNOTT. It was in 1918, in December, when the first placer claimants went upon the land and the oil development was some 7 miles away.

Mr. SUMNERS of Texas. Was not there a development on both sides of the river there at that time?

Mr. SINNOTT. There was a development some 7 miles away, when Mr. Testerman made his first location.

Mr. CARTER. I think there is no development on the north side of the river yet.

Mr. SINNOTT. No; not on the north side of the river.

Mr. HUDSPETH. If the gentleman will yield further, I believe the gentleman in answer to the question of my colleague [Mr. LANHAM] said there were about 1,000 acres upon which oil had been discovered on this land. Then under the terms of this bill, and I am asking the question, the exception made in line 11, page 3—

> Except in those cases where two or more locations or claims have been assigned to one person or corporation, and in such cases not more than 640 acres shall be granted by leases or permits to any one person or corporation.

Under that it will be permissible for the Secretary of the Interior to award the entire tract to one man, or practically the entire tract, would it not?

Mr. SINNOTT. It would be permissible to award to one citizen 640 acres.

Mr. HUDSPETH. Or a corporation.

Mr. SINNOTT. Provided, first, that the one citizen was equitably entitled to it and that he was there in good faith and made expenditures upon the land with reasonable diligence to discover oil.

How much time have I consumed?

The CHAIRMAN. The gentleman has four minutes remaining.

Mr. HUDSPETH. It would be permissible for him to award that number of placer claims up to 640 acres to a corporation under this provision?

Mr. SINNOTT. Yes. That would be permissible. On that I would like to speak under the five-minute rule.

Mr. Chairman, I reserve the balance of my time.

Mr. RAKER. Mr. Chairman, no one could intelligently undertake to state the facts in this case in 15 minutes, or 20 or 30 minutes, or even in an hour; he could not do it decently and fairly and intelligently, and it is an outrage to attempt to pass a bill of this kind at this late hour in the afternoon.

This litigation has been on for many years. The Supreme Court of the United States about 40 years ago decided this case in regard to the meander line and where the Texas line was and where the Oklahoma line was. It was in that condition for over 30 years when this dispute arose. The people on the north claimed it in various ways—by virtue of riparian rights and otherwise. The people in the State of Texas claimed the right to the land and claimed the right to the land now involved on the ground that a treaty gave it to the State of Texas, and that their title ran to the medial line of the river. The result was that the Oklahoma people were fighting for it and the Texas people were fighting for it, and the Texas people got charge of it through the Texas Rangers and through the courts of Texas and the State administration. They held possession to all this land. The Oklahoma people were down and out and helpless.

What do they do? They go into the Supreme Court of the United States and file an original bill and a receiver is appointed. The receiver then takes charge of the property in behalf of all the parties—the riparian owners and the Texas claimants and the Oklahoma claimants—and during that time the receiver has been holding the property, boring for oil, and impounding it. The receivers summoned before them the various parties. The Supreme Court affirmed its decision about a year and a half ago, holding that that case is res adjudicata, and that the line was on the south bank of the Red River between Oklahoma and Texas.

Mr. LONDON. To whom did the court award——

Mr. RAKER. In just a moment. That was only deciding one point. Then came the other question as to whether or not these people, or any of them, were entitled to the land. The Supreme Court unanimously held that no one owned this land; that no one had any claim to it; that it is public land of the United States, not subject to the oil leasing bill, not subject to placer-mining claims; so that the Texas people who claimed to own the land through their government were wiped out by the first decision, to the effect that the line between Oklahoma and Texas was on the south bank of the Red River. The Oklahoma placer-mining claimants by the second decision, rendered a short time ago, claimed that they had been wiped out of existence so far as any claims were concerned, because the land was not subject to the homestead, placer mining, or oil leasing acts.

Another decision followed within a month ago, holding that the boundary was not in the high back but upon the back further into the river, so that it took out many acres that these people claimed who went to Texas, because the south boundary instead of being high on the elevation was closer to the river.

So here we stand. No one is entitled to the land, and that is held by the highest court of the land, so that there can be no real claimant to the land or to the oil coming from the land; and the only question now is, What is Congress going to do with the oil that has been produced and the money that has been impounded and held by the receivers, and what is going to be done with the land in the condition in which we find it without legal claim?

The CHAIRMAN. The time of the gentleman from California has expired.

Mr. RAKER. Mr. Chairman, I ask for one minute more.

The CHAIRMAN. Is there objection?

There was no objection.

Mr. ROACH. Mr. Chairman, will the gentleman yield?

Mr. RAKER. Yes.

Mr. ROACH. If I understand this situation correctly, this land that the gentleman speaks of is land that was originally between two reservations of the Kiowa and Comanche Indians?

Mr. RAKER. No; it has been held all the time not to be within the Indian reservation.

Mr. ROACH. I understand it has been held to be not within the Kiowa and Comanche Reservation; but in any of these meetings that the gentleman has referred to, have the original tribe of the Kiowa and Comanche Indians or their legal representatives had any hearings in this case?

Mr. RAKER. Not so far as the committee is concerned. There are about 10 volumes of a thousand pages each before the Supreme Court of the United States, and there is a large volume of testimony taken by the Committee on Public Lands, but so far as I know that question has not been presented.

Mr. GENSMAN. Mr. Chairman, will the gentleman yield?

Mr. RAKER. Yes.

Mr. GENSMAN. Has the question of the ownership of this land on the part of the Kiowa and Comanche Indians under the treaty of 1803 and the treaty of 1819 and the treaty of 1865 and 1867 ever been presented to the Committee on Public Lands?

Mr. RAKER. So far as I know, it has not.

Mr. GENSMAN. And it has never been presented to the Supreme Court of the United States. They have not been made a party to the decision.

Mr. RAKER. They have not been considered, and, so far as I know, the Public Lands Committee has never been concerned in it before.

Mr. GENSMAN. I understood the gentleman from California had filed a minority report in this matter.

Mr. RAKER. Yes.

Mr. GENSMAN. And the gentleman wanted to know when the matter was coming up. Did the gentleman know about this bill coming up this afternoon?

Mr. RAKER. No. I was here, as is my custom, and just learned by accident that it was coming up to-night. So here we are.

Mr. GENSMAN. I have been inquiring of the leaders on the Republican side and the chairman of the committee as to when this bill was to come up, and I was informed that it would not come up until Thursday. Just now, when I asked the chairman to yield me part of the 15 minutes, he told me that he did not know whether he could get any time for me or not. Here we are discussing a matter involving millions of dollars, and they insist on its being considered at 6 o'clock in the afternoon.

Mr. RAKER. No one knows the value of these lands.

Mr. SINNOTT. Will the gentleman yield?

Mr. RAKER. Yes.

Mr. SINNOTT. The gentleman said the Indians were not consulted.

Mr. RAKER. No; I did not make that statement. So far as I am individually concerned and the record shows, I have heard of no contention of any claims.

Mr. SINNOTT. The gentleman remembers that the attorney for the Department of Justice who was before the committee said that they carefully went into the matter of the Indian rights on the theory that the land belonged to the Indians, and that the evidence showed that they went carefully into that matter.

Mr. RAKER. I want to make this statement. All I say is the Secretary of the Interior wrote to the chairman of the Committee on the Public Lands stating that if we gave the placer-mining claimants 20 acres and not to exceed 160 acres, that would be doing well; that would be doing justice to all concerned.

The bill as it now stands gives 640 acres and will take all of the oil land there is in that territory. [Applause.] This report shows that there are over 50 claimants trying to lease the land, and the only question involved is, Is it just and right for Congress, without an opportunity to go into the facts, to turn around and put ourselves in the position where we are going to turn loose these lands and legislate it in favor of two claimants? I want to tell you that it is not right; it is not the right way to legislate. They have no claim legally and the land belongs to the United States.

Mr. SINNOTT. Will the gentleman yield?

Mr. RAKER. Yes.

Mr. SINNOTT. The gentleman refers to a letter from the Secretary of the Interior saying that 160 acres should be the limit. I know the gentleman was very busy at the time and did not attend all of the proceedings of the committee.

Mr. RAKER. I attended all except one, when there was a five-day argument, and I want to say that when strength and ability is exhausted a man can not sit seven or eight hours and hear an argument five days. I had to do some other work.

Mr. SINNOTT. The gentleman has overlooked the letter of the Secretary of the Interior suggesting 480 acres.

Mr. RAKER. I have not overlooked a single thing. I know there was a subsequent letter, but I set out in the report the letter of the Secretary of the Interior of June 29, 1922, in which he states that the limit should be 20 acres and not exceeding 160 acres and afterwards he filed another letter. But he said in his first letter that 20 acres and not exceeding 160 acres is all any people ought to have or any one man or any corporation ought to have. The Government is giving it to them. They have no legal right to it, and this bill turns over to two corporations, or the stockholders of those corporations, all this valuable land.

Mr. Chairman, I yield the remainder of my time to the gentleman from Texas [Mr. CONNALLY].

The CHAIRMAN. The gentleman from Texas is recognized for three minutes.

Mr. CONNALLY of Texas. Mr. Chairman, the gentleman from California has presented our contention regarding this bill very well indeed. The situation is simply this: With regard to the strip of land forming the bed of the Red River, the Supreme Court has held that particular strip of land from the middle of the river to the south cut bank to be the property of the United States. It also held that that particular land was not subject to the mining laws and consequently could not be entered upon under the placer-mining claims for oil. The placer claimants, in whose interest the bill is drawn, entered upon some of the lands and undertook to locate mining claims. After the placer claimants were there and had taken possession of the land the Department of the Interior informed them that they had no claim and could have no claim because the mining laws of the United States did not apply.

Prior to that time Texas had claimed from the center of the stream and had issued patents to some of the lands. People had gone in and occupied the land, claiming under the State, and if oil had not been discovered there never would have been any contention and the claimants under the State of Texas would now be in possession of the land. Under the decision of the Supreme Court the Texas claimants have no legal right there and the placer claimants have no legal rights there.

No one has any right there except the United States Government, and this bill grants a gift to some claimants, and our contention is that an amendment ought to be adopted to the bill providing that no single concern may get over 160 acres. Under the bill as drawn, it is possible for one concern, the Burke Divide Oil Co., to get 640 acres of the land, which would take up practically all of it.

Mr. SINNOTT. They claim less than three claims.

Mr. CONNALLY of Texas. The gentleman must remember that they claim 480 acres already.

Mr. SINNOTT. That is the Burke Divide. It is less than that.

Mr. CONNALLY of Texas. My information is that they have in the meantime acquired other placer claims that will bring the total up to 640 acres. Our contention is that since this is to be a gift to the claimants, no one concern ought to be allowed, and it ought not to be possible for any one concern to acquire practically all of that rich oil field. We therefore propose to offer an amendment to limit the maximum amount that any concern can acquire to 160 acres.

Mr. SINNOTT. Mr. Chairman, I yield the remainder of my time to the gentleman from Arkansas [Mr. DRIVER].

Mr. DRIVER. Mr. Chairman, it seems from the position of the geneleman from California [Mr. RAKER] and the gentleman from Texas [Mr. CONNALLY] that their principal objection to the bill as it is now presented is to the maximum acreage on which permits ought to be granted by the agency which this bill seeks to create for the purpose of determining the equities of the various claimants in Texas and Oklahoma under the placer-mining permit.

Mr. GENSMAN. Mr. Chairman, will the gentleman yield?

Mr. DRIVER. Yes.

Mr. GENSMAN. I want to relieve the gentleman's mind of the idea that the amount of acreage is the only objection there is to the bill.

Mr. DRIVER. Oh, there may be other objections, but I do not care to take up other phases at this time.

Mr. GENSMAN. The Indians have rights in this matter and I intend to see that they are preserved.

Mr. DRIVER. They can be adjusted. We are not undertaking by the bill to determine the right of any one party to the controversy. That was the proposition that we worked at in the committee, and changed the Senate bill in order better to arrive at that conclusion.

Mr. GENSMAN. But you did not work out the question of the Indian's rights in the committee, because the Indian was not a party.

Mr. DRIVER. We have excluded no one, but we would if we placed a limitation of less than 640 acres in this bill, for this reason: It is in evidence that the parties who originally developed this oil property petitioned for permits embracing an area of 20 acres each. For the better operation of their property they proceeded to go into a contract, creating an unincorporated company for the purpose of getting the necessary amount of capital to operate these properties, and in doing it they have conveyed these 20-acre plots, separate and distinct acreage under the permits, to this unincorporated company, purely a voluntary association, and in the aggregate it amounts to 640 acres.

Mr. BLACK. It is my understanding that the Secretary of the Interior refused to grant a lease, holding that this land was not under the placer law.

Mr. DRIVER. I understand the permits were only petitioned for, but these parties are in a position to present their equitable claims to the 20-acre permits which they petitioned for. Nobody has title except the Government, but somebody went in there and spent their money and developed the oil field, and we take the position that the parties who did that in good faith, who developed this property for the Government, on which we are now realizing 12½ per cent of the money flowing from it, are entitled to consideration, and that it would be an outrage to say now that we will take them by the neck and take all this property away from them. [Applause.] If they are going to create an agency to deal with these claims, let them create that agency to determine equities in the case, not deny any man any part of a right that he may be able to convince the agency he is entitled to.

Mr. BLACK. Is it not a fact that when these gentlemen went in there oil was developed on both sides?

Mr. DRIVER. No; it is not a fact and the hearings disclose that the nearest developed well when they went in on this property was 7 miles from this property. No one disputes that. I admit that down in the Burkburnett field oil was developed, but no one on earth had any reason to believe that there was any more oil there than there was 6 miles the other way.

Mr. BLACK. Does the gentleman claim it to be wildcat territory, where oil is developed on both sides?

Mr. DRIVER. I want to say that was so uncertain that it partakes of a wildcat nature.

The CHAIRMAN. The time of the gentleman has expired. All time has expired. The Clerk will read the bill for amendment.

The Clerk read as follows:

Be it enacted, etc., That the Secretary of the Interior is hereby authorized to adjust and determine the equitable claims of citizens of the United States and domestic corporations to lands and oil and gas deposits belonging to the United States and situated south of the medial line of the main channel of Red River, Okla., which lands were claimed and possessed in good faith by such citizens or corporations, or their predecessors in interest, prior to January 1, 1920, and upon which lands expenditures were made in good faith and with reasonable diligence in an effort to discover or develop oil or gas. And the Secretary of the Interior is further authorized to issue to those persons or corporations that may be found equitably entitled thereto permits to explore, or leases of, said lands so claimed by them.

With the following committee amendment:

Page 1, line 10, strike out "January 1, 1920," and insert "February 25, 1920."

The CHAIRMAN. The question is on agreeing to the committee amendment.

The committee amendment was agreed to.

The Clerk read as follows:

Committee amendment: Page 2, line 3, after the word "gas" strike out the period and all of lines 3, 4, 5, and 6, and insert in lieu thereof the words "by issuance of permits or leases to those found equitably entitled thereto."

Mr. GENSMAN. Mr. Chairman, I rise in opposition to the committee amendment. For some time I have been exceedingly interested in this particular legislation. I have inquired of the leader on the Republican side when it would come up in the House. I have made inquiries of the chairman of the committee as to when the matter would come before the House, with a view of presenting the real facts in the case to this House. A little while ago I called at the desk of the chairman of the committee and was informed that of the 15 minutes that was given on that side he did not know whether I would get any time or not. I then went over on the Democratic side and asked for time. They advised me it was all taken up. This is no way of taking up legislation affecting land worth fortunes, possibly, or depriving the rightful owners of the land or royalties of such valuable property. I have given notice to everyone that I represented the Indians in this matter and I wanted to be heard.

Mr. Chairman, the Indians of Oklahoma are the aboriginal owners of this particular land, and if you this evening at this hour of 6.10, in your hurry to get home to your dinners, give away the land that rightfully belongs to the Kiowa and the Comanche Indians, then some Congress some time later will authorize the Indians to go into the Court of Claims, and the taxpayers will have to go down in their jeans and dig up money for the land that we are giving away which rightfully belongs to the Kiowa and the Comanche Indians and affiliated bands.

If I had time and if the chairman of this committee had given me an opportunity to present at this time the title shown by the treaties of 1803, 1819, 1865, and 1867, there would not be a lawyer here this evening who would for one moment think of voting for this bill. I am sorry to say that I have not the time, the way this legislation is being rushed through.

Mr. ROACH. Will the gentleman yield?

Mr. GENSMAN. I will.

Mr. ROACH. I agree with what the gentleman says, and I want to state to the gentleman that I have read the treaties of 1819 and 1865 and 1867, and I feel clear in my mind that if the Supreme Court is called upon to say so, they will say that the Government of the United States has been on this particular property that we now propose to dispose of in trust for the Kiowa, Comanche, and affiliated tribes.

Mr. GENSMAN. Now, that is an absolute fact. Mr. ROACH has read the treaties and knows what they contain. He has all the decisions I have given him, and he has been convinced, and the chairman of the Committee on Indian Affairs knows, that this belongs to the Indians. There is no question about that, and yet you are here to rush it through in a few minutes.

Mr. RAKER. Then the only fair, decent, and proper thing to do is to recommit this bill, is it not?

Mr. GENSMAN. At least give us more time to present it. I dislike very much, gentlemen, to do what I am about to do this evening; I dislike very much to be put in that position and attitude, but on behalf of the Indians of the Kiowa, Comanche, and affiliated bands, at this time, gentlemen, I move to strike out the enacting clause.

Mr. SINNOTT. Mr. Chairman, I desire to rise in opposition to the motion.

Mr. BLANTON. On that I move the previous question.

Mr. CARTER. That can not be done in the Committee of the Whole House on the state of the Union.

Mr. SINNOTT. Mr. Chairman, I rise in opposition to the gentleman's motion. Mr. Chairman, I regret very much that the gentleman from Oklahoma could not have been notified in advance of the calling up of this bill. I regret I was not notified a few hours ago. I requested the party managers that I might be given at least a day's notice before this bill was brought up. I was notified within five minutes time to come in and move to go into the Committee of the Whole House to consider this bill. We are in the last days of the session. There is a great congestion of business here. We are fortunate in being permitted to consider the bill. The gentleman came to my table after I had used 14 minutes and I had no time at my disposal.

Mr. GENSMAN. Will the gentleman yield?

Mr. SINNOTT. I decline to yield now. I informed him there would be plenty of time under the five-minute rule. There will be no trouble about time. Now, as to the claims of the Indians, I will say that that matter was gone into fully by the Department of Justice. In fact they predicated their first suit upon the claims of the Indians, and after a full investigation they found that it was untenable.

Mr. GENSMAN. Will the gentleman yield?

Mr. SINNOTT. Not now. It was nearly a year after Mr. Testerman made his location upon the land in question that the Government came to a conclusion that this was public land. Some one on that side has stated that before Mr. Testerman went upon the land that he was told that he could not file upon this public land. Mr. Testerman was not told that. These locators were told that the land was not public land; there was a decision to that effect.

Mr. CARTER. Will the gentleman yield?

Mr. SINNOTT. I yield.

Mr. CARTER. I am very much in sympathy in protecting the Indian in his rights, but as a matter of fact the only right the Indian would have here—Kiowa or Comanche—upon any land would be the right of lessor, and this bill does not undertake to settle the right of the lessor or owner of the land, but simply deals with the lessee of the land. Is that correct?

Mr. SINNOTT. Yes.

Mr. CARTER. The Indian is not the lessee, he is the lessor, and it does not affect him.

Mr. SINNOTT. Mr. Chairman, I consider this Indian claim a spurious claim, in order to prejudice the House against this bill. We had the Assistant Secretary of the Interior with the committee when we acted upon the bill; we had the gentleman who represented the Government in these cases before us for 10 days, going thoroughly into all these cases; the attorney from the Department of Justice which predicated the first case upon the Indian rights, and afterwards abandoned it because they were found to be untenable; and now the gentleman from Oklahoma comes in here at this last minute and tries to throw sand into the eyes of the House—tries to prejudice you on the theory that we are going to perpetrate some outrage upon the Indians. Why, Mr. Chairman, it is the purest rot.

The CHAIRMAN. The time of the gentleman has expired.

Mr. CHANDLER of Oklahoma. Mr. Chairman, will the gentleman yield?

Mr. SINNOTT. Yes.

The CHAIRMAN. The time of the gentleman has expired.

Mr. RAKER. Mr. Chairman, I move to strike out the last word.

The CHAIRMAN. The gentleman from California moves to strike out the last word.

Mr. BLANTON. Mr. Chairman, I make the point of order that all debate on this motion of the gentleman has been concluded and exhausted.

Mr. RAKER. I ask unanimous consent to proceed for five minutes.

The CHAIRMAN. The gentleman from California asks unanimous consent to proceed for five minutes. Is there objection?

Mr. BLANTON. I object.

The CHAIRMAN. Objection is heard.

Mr. RAKER. Mr. Chairman, I move to strike out the last three words.

Mr. SINNOTT. Mr. Chairman, we have before us the second amendment to the first section.

The CHAIRMAN. The gentleman from Oklahoma [Mr. GENSMAN] moves that the enacting clause be stricken out. That is what is pending.

Mr. SINNOTT. I make the point of order, Mr. Chairman, that that motion can not be made at this time, that section not having yet been read.

The CHAIRMAN. If the point of order would lie in any case, it would not lie now. It comes too late. The question now is on the motion of the gentleman from Oklahoma, that the enacting clause be stricken out.

The question was taken, and the chairman announced that the "noes" seemed to have it.

Mr. GENSMAN. Mr. Chairman, I call for a division.

The CHAIRMAN. The gentleman from Oklahoma asks for a division.

The committee divided; and there were—ayes 23, noes 81.

So the motion was rejected.

The CHAIRMAN. The Clerk will report the second committee amendment.

Mr. RAKER. Mr. Chairman, this amendment has not been disposed of.

The CHAIRMAN. The gentleman is recognized for five minutes.

Mr. RAKER. Mr. Chairman, a good many salutary words are used about claimants having rights. Let us not deceive ourselves. Anyone who will investigate the matter will realize that there are no legal rights involved in this bill. These people are appealing to the conscience of Congress to give them at least 640 acres of valuable oil land, when that land includes two claims.

Now, do not deceive yourselves. I use the words "Texas claimants" simply because they are in the record and because they claimed it as State land belonging to the State of Texas. The governor and every officer of the State of Texas maintained that right, and when these people claimed that all was theirs and when the Supreme Court sent its receiver out, the Texas claimants had possession of this land. Do not forget that. Now the Supreme Court has finally said that they have no right, and so they are down and out.

Now, what about the other fellows? They have been working; they have been spending their money; they have drilled wells; they have gone to large expense. But no one can say that they are equitable claimants, because the Supreme Court cuts them off at the bank of the river and they are down and out. The other fellows between the south bank of the river and the medial line did not get possession of the property. They were out. The receivers held possession under the power of the Supreme Court. The lands were taken from the Texas people.

Now they say, "We thought, we believed we could get this land by virtue of filing mineral and placer claims," some on the north side claiming it as riparian land, claiming that they owned it. Others tried to claim it in various other modes, but eight men rush in and locate 160 acres. In the same town they get another 80 acres and in another town they get another 80 acres, until they have 640 acres of Government land, upon which no placer-mining claims can be filed.

I am willing to treat them fairly, but they have no right here to say that we have a condition here where we must give them this land. I want to say that it would be an outrage to turn this land over, this rich oil land, to two corporations. I do not care how they are formed or where they were formed. And the Members of Congress at this late hour, when they could not get any memoranda or hearings or anything in God's world before the committee, had to grab a little report in order to have it in hand; and we hear them about these people being entitled to this land because they went down there and made placer-mining filings that the Supreme Court said were absolutely null and void.

Mr. COLLINS. Mr. Chairman, will the gentleman yield?

Mr. RAKER. Yes.

Mr. COLLINS. They discovered this oil field, did they not?

Mr. RAKER. No; they did not discover this oil field. I am glad the gentleman raised that question.

Mr. CHANDLER of Oklahoma. Tell us who did.

Mr. RAKER. A few miles below were booming oil wells, and everybody who knows anything knows that to go here and there in search of oil you have got to test, and then you might find oil.

The CHAIRMAN. The time of the gentleman from California has expired.

Mr. SNYDER. Mr. Chairman, I move to strike out the last two words.

Mr. CARTER. Mr. Chairman, I ask for recognition.

The CHAIRMAN. The gentleman from Oklahoma [Mr. CARTER] is recognized. He is a member of the committee.

Mr. CARTER. Mr. Chairman, if the committee will bear with me a moment I will give a little history of this Red River bed contention. When oil drilling began on the Red River bed there was considerable controversy brought about on account of the prospective value of the land, the State of Oklahoma claiming it and the Federal Government claiming it; and finally the Texas Rangers came in and vi et armis took possession of the property.

Mr. SUMNERS of Texas. Mr. Chairman, will the gentleman yield right there?

Mr. CARTER. I have only five minutes.

Mr. SUMNERS of Texas. I will get you more time.

Mr. CARTER. I yield.

Mr. SUMNERS of Texas. You say Oklahoma claimed it and the Government claimed it. Did not the people also claim it under title from Texas?

Mr. CARTER. Does the gentleman mean the riparian owners?

Mr. SUMNERS of Texas. No; claimants.

Mr. CARTER. I never heard of the Texas claimants to the oil rights until after the development had started, or at least until after the drilling of the wells had begun.

So the case went through the courts and up to the Supreme Court of the United States. The court held that the boundary line was at the south bank of the river, but that portion of the river bed south of the medial line while in the State of Oklahoma did not belong to the riparian owners, but was public land. Then the Supreme Court went a little further and held that these particular public lands were not subject to the placer-mining laws. So that left all the lessees in about the same situation—those who had leased from Oklahoma authorities, those who had leased from the Federal authorities, and those who had leased from Texas authorities—with the exception that, I think has been clearly shown, that the Texas authorities did not begin development as early as those who claimed under Oklahoma and the Federal authorities.

Mr. CONNALLY of Texas. The Federal authorities never did lease anything.

Mr. CARTER. I think the gentleman is right; they claimed under the placer-mining laws.

Mr. CONNALLY of Texas. And the Secretary of the Interior notified them that they had no right to locate under the placer-mining laws.

Mr. CARTER. I do not remember that; but, as a matter of fact, what ought to be done with the property will never be done; that is, this property ought to be given to the State of Oklahoma for school land in lieu of the sections 16 and 36, which all the other States got and which Oklahoma did not get. I have tried to have that done, but have failed. I am going to offer, if I have the opportunity, a motion to recommit, to give these lands to the State of Oklahoma. Failing in that, I am going to support this bill. I am going to support it because I think it does justice by all the rightful claimants in the premises. I think it gives every man his day in court. Originally the bill set the date at which claims and possession must have been made as of January 1, and that shut out everybody practically except the Burk Divide people, but since it has been moved up to February 25, that seems to include and embrace all of the legitimate claimants. Therefore I shall expect to give the bill my support.

The CHAIRMAN. The time of the gentleman has expired.

Mr. SUMNERS of Texas. Mr. Chairman, I ask unanimous consent that the gentleman from Oklahoma have five minutes more. He lives in Oklahoma, and he is an honest, fair man, and he knows all the facts.

The CHAIRMAN. Is there objection to the request of the gentleman from Texas?

There was no objection.

Mr. SUMNERS of Texas. Now, having got this time, will the gentleman yield? [Laughter.]

Mr. CARTER. I will be very glad to.

Mr. SUMNERS of Texas. Did the State of Oklahoma ever exercise any jurisdiction over the dry land south of the Red River; and if so, how did it do it?

Mr. CARTER. I do not know what that has got to do with the case, but the gentleman from Texas well knows the reputation of the Texas Rangers and their ability to shoot straight. Perhaps that accounts for the fact that Oklahoma did not attempt to take jurisdiction on that side of the medial line. [Laughter.]

Mr. SUMNERS of Texas. Here is what I am trying to get at: There was a dispute as to where the Red River really was.

Mr. CARTER. Yes.

Mr. SUMNERS of Texas. It wanders about in the sand there, and what I am trying to get is, Did the State of Oklahoma exercise any jurisdiction that the gentleman knows of south of where the stream is?

Mr. CARTER. I can not give the gentleman the information, but I think I have given him the reason why it might not have been attempted. One more thing and I am through.

Mr. GRIFFIN. Will the gentleman tell us where the property is located?

Mr. CARTER. In the south part of Cotton and Tillman Counties, in the southwest part of Oklahoma, on the Red River. Now, one word with reference to the position taken by my genial friend from Oklahoma [Mr. GENSMAN]. He is always on the alert looking after his people, and the Kiowas and the Comanches are a part of his constituents. I sympathize in any attempt of my good friend to get legislation in favor of his Indian constituents, but this bill does not jeopardize the Indians' rights. My motion which I propose to recommit the bill would deal with their rights. This bill deals only with the rights of the lessees, those who produced the oil, the men who have had the drilling done. It does not undertake to deal with the royalty or the title. The royalty is to be 12½ cents; and if the Comanches and the Kiowas bring suit and win it the best that they could get would be 12½ cents, which is reserved here to the Federal Government, so that their rights are not brought into question at all.

Mr. GENSMAN. Does the gentleman contend that if I give away property that rightfully belongs to him, lease it for anything I propose to lease it for, that I can pay him whatever I get for it as rental and that that satisfies him?

Mr. CARTER. The gentleman from Oklahoma well knows the relationship between the Indian and the Federal Government. The Federal Government is the guardian and the Indian is the ward. If the Federal Government makes a contract, whether in the capacity of principal or guardian, its right to do so can not be questioned, and the gentleman well knows the courts have so held on numerous occasions.

When the guardian exacts for his ward the same measure of compensation required for himself, then I think it can be truthfully said that the stewardship has been fully discharged, and that is exactly what is made possible by this bill. The Government retains the royalty of 12½ cents. That is not given to the lessee; that is not bartered away. If the courts should decree this property to the Kiowas and Comanches, they would still have the one-eighth royalty, which is all the Government asks for itself.

Mr. SNYDER. Mr. Chairman, I dislike very much to enter into this controversy at this late hour in the day, but considerable has been said about the Indians' rights in this matter, and there is some doubt in my mind as to the situation as it exists to-day; but the facts are that the Hidalgo treaty of 1819 sets "the south bank of the Red River as the north boundary of Mexico," or "Spain," as it was called at that time. In 1865 another treaty was made between the Comanches and the Kiowa Indians and the United States in which the reservation ran to the "south side of the Red River" and to "the south bank of the Red River." Three years subsequently it became necessary to prescribe to some extent the limits of the Comanche territory, and a treaty was agreed upon between the United States and the Comanche Indians, and in that treaty the line was fixed as the "center" of the Red River. It is believed that this was inadvertently done, because of the fact that in practically all such treaties and agreements the boundary would be the "center" of the stream; but in this case there is that lapse. Leaving that as it is, it occurs to me that it is a question to be proven; and no matter who gets these oil lands, they can never take away from the Indian the royalties or anything of value which will accrue from them. My judgment now is that this legislation, while it may temporarily set back the value of the income of that property to the Indians, if the old treaty proves the facts, whoever gets the oil land will have to pay the royalty eventually to the Indians, because the Government will look out for that.

Mr. ROACH. Mr. Chairman, will the gentleman yield?

Mr. SNYDER. Yes.

Mr. ROACH. Has there ever been any legal determination of the interest of the Indians in this property?

Mr. SNYDER. So far as I know there has never been.

Mr. CHANDLER of Oklahoma. Is it not a fact that this bill simply deals with the lessee, and the Government will collect the royalty, and if the land is found to belong to the Indians the Indian will get the title and can collect the royalties?

Mr. SNYDER. The gentleman is right. The only interest I have in the matter is to have it understood that we are awake to this proposition, and if the bill goes through we will attempt, at some time undoubtedly, to take over these royalties and acquire the rights which we believe belong to the Indians.

Mr. CARTER. You would have to do that whether the bill passes or not.

Mr. SNYDER. Yes.

Mr. GENSMAN. Mr. Chairman, will the gentleman yield?

Mr. SNYDER. Yes.

Mr. GENSMAN. I recognize the fact that there are only about 65 Members of the House present now, that it is 20 minutes of 7 o'clock, and that if I had the opportunity to present this matter to others, the bill would not pass. I want to make the point of no quorum, though I will withhold it until the gentleman is through.

Mr. SNYDER. I was surprised when the bill came on here this afternoon. I had intended to be here and hear the argu-

ments pro and con in regard to it, but when I came in I found that the bill was under consideration. I want the membership of the House to at least have the facts about these treaties, and that is all I have to say about it.

The CHAIRMAN. The time of the gentleman from New York has expired. The question is on agreeing to the second committee amendment.

The committee amendment was agreed to.

The Clerk read as follows:

SEC. 2. That applications for permits and leases under this act shall be made to the Secretary of the Interior, and shall be made within and not after 30 days from and after the date that this act becomes a law. Leases and permits under this act shall be granted to the assignees or successors in interest of the original locators or the original claimants in all cases where the original locators or original claimants have assigned or transferred their rights, but when leases or permits are granted to the assignees or successors in interest of the original locators or original claimants the said leases and permits shall be subject to all contracts, not contrary to law or public policy, between the original locators or original claimants and their successors in interest, which the lessee or permittee assumes and agrees to observe. In every case where there shall be any conflict or contest on account of overlapping claims the said conflict or contest shall be determined upon competent evidence, and in every such case the land in conflict shall be granted to the person or corporation that in good faith first possessed and claimed the land and maintained such possession until dispossessed by judicial process or otherwise, having made expenditures thereon as in section 1 required.

With the following committee amendment:

Page 2, line 11, strike out the word "thirty" and insert the word "sixty."

Mr. BLACK. Mr. Chairman, I rise in opposition to the amendment.

The CHAIRMAN. The gentleman from Texas is recognized for five minutes.

Mr. LONDON. Mr. Chairman, the gentleman from Texas is too interesting a man to have such a small audience, and I make the point of order that there is no quorum present.

The CHAIRMAN. The gentleman from New York makes the point of order that there is no quorum present. The Chair will count.

Mr. LONDON (interrupting the count). I withdraw the point of no quorum.

The CHAIRMAN. The gentleman from Texas is recognized.

Mr. CONNALLY of Texas. Mr. Chairman, a point of order.

The CHAIRMAN. The gentleman will state it.

Mr. CONNALLY of Texas. After the Chair had announced that there was no quorum present——

The CHAIRMAN. No announcement was made.

Mr. BLACK. Mr. Chairman, this bill as it originally passed the Senate would have had the effect of granting these leases to two claimants. In my judgment, there is not any doubt in the world about that. The Committee on Public Lands has placed in the bill some very wise amendments, and naturally I am in accord with these and shall vote for them——

Mr. LARSEN of Georgia. Will the gentleman yield?

Mr. BLACK. Yes; I yield with pleasure.

Mr. LARSEN of Georgia. The gentleman from California referred to those as incorporations. I want to remind the gentleman that the two concerns he is speaking of are not corporations. The Mellish Co. is merely an association of citizens composed of a band of farmers in Oklahoma and elsewhere, and——

Mr. BLACK. They are in effect corporations.

Mr. LARSEN of Georgia. The evidence in the case shows differently.

Mr. BLACK. But be that as it may, the fact remains and can not be disputed that the bill as drawn and passed by the Senate had language which would have awarded these lands to two claimants. I agree with the amendments that the House committee has proposed that will permit all of these claimants to come in and go before the Secretary of the Interior and establish their equities. But I think that the committee ought to have gone further and, in the absence of their not having done so, I think the House ought to go further and amend section 3 by providing that not more than 160 acres shall be granted by lease or permit to any one person or corporation, and strike out the rest of the section. The gentleman from Arkansas [Mr. DRIVER], for whom I have a very high regard, in arguing upon this proposition contended that these claimants have gone out there in an undeveloped territory and in a wildcat enterprise have developed new oil territory. Now, as a matter of fact, they went out there on land which was adjacent to developed territory. The Secretary of the Interior held they had no right to lease the land under the placer-mining laws.

Mr. VAILE. Will the gentleman yield?

Mr. BLACK. In a moment. I take the position that these claimants do not stand upon the footing of claimants who went out into an undiscovered oil territory and by prospecting of that kind developed an entirely new field. I yield to the gentleman.

Mr. VAILE. The gentleman has made a statement, which came from several other gentlemen from the State of Texas, that these men were advised by the Department of the Interior that they could not file a placer-mining claim. The gentleman is entirely mistaken in assuming that advice was given. Before they actually applied for patent they went down to file under the advice of the best attorneys in Oklahoma and southern Texas and would not buy until the case came up upon application for patent.

Mr. BLACK. There is no contradiction between the gentleman and myself. I said the Department of the Interior, representing the United States Government, when the proposition was put up to it said that these men had no legal right to take——

Mr. VAILE. That is, after they had made their location, and——

Mr. SINNOTT. These men were told by the Department of the Interior this was not public land, and they insisted it was.

Mr. BLACK. Oh, well, of course the Supreme Court of the United States held that the placer-mining laws did not apply to these lands, and the point that I make is that I am willing for the Secretary of the Interior to have the right to adjust these equities, but I do not think that two claims should be permitted under a possible ruling of the department, as this bill will permit, to take all of these public lands and get the benefit of the whole field. Certainly 160 acres is as much as should be granted to any one claimant.

Mr. HUDSPETH. Will the gentleman yield?

Mr. BLACK. I will.

Mr. HUDSPETH. Is the gentleman aware of the fact that the Secretary of the Interior drew a bill making it 160 acres in that bill?

Mr. BLACK. Yes. I believe the Secretary made such a recommendation in the first bill that he suggested. I contend that his first recommendation was wise and should now be adhered to.

Mr. ROACH. Mr. Chairman, I rise in opposition to the amendment. Mr. Chairman, I am not going to take the entire five minutes to which I am entitled. I merely want to emphasize, if I may, what the gentleman from New York [Mr. SNYDER], chairman of the Committee on Indian Affairs, had to say relative to the title to this property that has brought on such a debate here this afternoon. I want, if I can, with no intention of obstructing this legislation, to state that, in my opinion, after having read the treaties that have been referred to in the debate, and particularly the treaties of 1865 and 1867 under which the allotments to the Kiowa and Comanche Indian Tribes were laid out, that it does seem to me that a fair and reasonable construction of what was intended to be conveyed in these treaties would result in a finding by the court, when the question is presented to them, that it was intended that this identical property that is to be disposed of was intended to be conveyed to the Kiowa and Comanche Tribes at that time and within reservations then laid out, and I merely wish to state here now, as a member of the Indian Affairs Committee, that we have not been asleep as to their interest in this matter. Bills are constantly being brought before our committee making requests to authorize various tribes of Indians to go into the Court of Claims to assert that some real or imaginary claim which they believe that they may have, and in my judgment if such a bill was presented as that in this particular case there would be more justification for favorable action upon such legislation as that, or at least as much so as any of these bills that we have previously reported.

Now, I merely wanted to announce to the committee and to the Members of Congress here present that I anticipate legislation of that character will be requested of our committee, and in my present frame of mind and with my present information and views upon what was intended to be conveyed by the two treaties to which reference has been made, the one of 1865 and the one of 1867, it is almost inconceivable to me that anyone with a legally trained mind could have made an expression such as has been referred to by the chairman of this Committee on the Public Lands, to the effect that the Indians had no rights therein. I want to say that so far as I know there has never been any legal determination of that character, and the mere fact that some departmental official, incidental to some other matter under consideration, has said that the Kiowas and Comanches have no interest in this land is ridiculous to my mind

as establishing such fact. That question could not have been gone into thoroughly; otherwise such a statement would not have been made by the departmental official referred to.

Mr. MORGAN. Mr. Chairman, will the gentleman yield?

Mr. ROACH. Yes.

Mr. MORGAN. All the rights that the Indians originally had are reserved, are they not?

Mr. ROACH. Yes. As I said at the outset, I am not attempting to obstruct this legislation, but I am merely replying to what the gentleman from Oregon [Mr. SINNOTT] has said, that some departmental official, incidental to some other matter, has said that these Indians had no right to this property. I say, having read these treaties, I am of the opinion that that statement is bordering on the absurd, coming from one who pretends to be trained in the law. I assert that in my opinion the Indians do have an interest in this property and when that matter is brought before Congress and placed before it, as the gentleman from Oklahoma indicated awhile ago would be done, it will be shown that during all these years the Government has merely held these lands in trust for the Indians, and that they are of right entitled to the title to this land.

Mr. GENSMAN. Mr. Chairman, I rise in opposition to the amendment.

Mr. SINNOTT. Mr. Chairman, there has been already over 10 minutes of debate on the paragraph.

Mr. GENSMAN. Not on this paragraph.

The CHAIRMAN. The Chair will recognize the gentleman from Oklahoma for five minutes.

Mr. GENSMAN. Mr. Chairman and gentlemen, looking over the House this evening, with the number of men here from Indiana, the home of so many people interested in the Burk Divide, I do not suppose if I showed you an abstract of title to this property in the Indians under deed to the Kiowa and Comanches it would receive any great attention at your hands. But regardless of that fact, I am going to try to show you an abstract of title in behalf of these Indians. Those who are lawyers will understand it, and I think it is fortunate that there are some lawyers here this evening.

Back in 1803 the Government of the United States had a treaty with France. A little bit later, in 1819, the Government had a treaty with Spain. I am sorry I have not a map here to show you just what that treaty provided, but suffice it to say, so far as that treaty affects this particular piece of property, in it the south bank of the Red River was described as the north boundary of what was then Spain, or what was afterwards known as Mexico.

That is the first page in the abstract. In 1865 the Government of the United States had a treaty with the Kiowa and Comanche Indians, and in that treaty the south bank of the Red River was designated as the south side or boundary of the United States. It reads as follows:

TREATY WITH THE COMANCHE AND KIOWA, 1865.

Articles of a treaty made and concluded at the council ground on the Little Arkansas River 8 miles from the mouth of said river, in the State of Kansas, on the 18th day of October, in the year of our Lord 1865, by and between John B. Sanborn, William S. Harney, Thomas Murphy, Kit Carson, William W. Bent, Jesse H. Leavenworth, and James Steele, commissioners on the part of the United States, and the undersigned chiefs and headmen of the several bands of Comanche Indians specified in connection with their signatures, and the chiefs and headmen of the Kiowa Tribe of Indians, the said chiefs and headmen by the said bands and tribes being thereunto duly authorized.

ARTICLE 1. It is agreed by the parties to this treaty that hereafter perpetual peace shall be maintained between the people and Government of the United States and the Indians parties hereto, and that the Indians parties hereto shall forever remain at peace with each other and with all other Indians who sustain friendly relations with the Government of the United States.

For the purpose of enforcing the provisions of this article, it is agreed that in case hostile acts or depredations are committed by the people of the United States, or by the Indians on friendly terms with the United States, against the tribe or tribes or the individual members of the tribe or tribes who are parties to this treaty, such hostile acts or depredations shall not be redressed by a resort to arms, but the party or parties aggrieved shall submit their complaints, through their agent, to the President of the United States, and thereupon an impartial arbitration shall be had under his direction, and the award thus made shall be binding on all parties interested, and the Government of the United States will in good faith enforce the same.

And the Indians parties hereto, on their part, agree, in case crimes or other violations of law shall be committed by any person or persons members of their tribe, such person or persons shall, upon complaint being made in writing to their agent, superintendent of Indian affairs, or to other proper authority, by the party injured, and verified by affidavit, be delivered to the person duly authorized to take such person or persons into custody, to the end that such person or persons may be punished according to the laws of the United States.

ART. 2. The United States hereby agree that the district of country embraced within the following limits, or such portion of the same as may hereafter from time to time be designated by the President of the United States for that purpose, viz: Commencing at the northeast corner of New Mexico, thence south to the southeast corner of the same; thence northeastwardly to a point on main Red River opposite the mouth of the north fork of said river; thence down said river to the 98th degree of west longitude; thence due north on said meridian to the Cimarone River; thence up said river to a point where the same crosses the southern boundary of the State of Kansas; thence along said southern boundary of Kansas to the southwest corner of said State; thence west to the place of beginning, shall be and is hereby set apart for the absolute and undisturbed use and occupation of the tribes who are parties to this treaty, and of such other friendly tribes as have heretofore resided within said limits, or as they may from time to time agree to admit among them, and that no white person except officers, agents, and employees of the Government shall go upon or settle within the country embraced within said limits, unless formally admitted and incorporated into some one of the tribes lawfully residing there, according to its laws and usages. The Indians parties hereto on their part expressly agree to remove to and accept as their permanent home the country embraced within said limits, whenever directed so to do by the President of the United States, in accordance with the provisions of this treaty, and that they will not go from said country for hunting purposes without the consent in writing of their agent or other authorized person, specifying the purpose for which such leave is granted, and such written consent in all cases shall be borne with them upon their excursions, as evidence that they are rightfully away from their reservation, and shall be respected by all officers, employees, and citizens of the United States, as their sufficient safeguard and protection against injury or damage in person or property, by any and all persons whomsoever. It is further agreed by the Indians parties hereto, that when absent from their reservation, they will refrain from the commission of any depredations or injuries to the person or property of all persons sustaining friendly relations with the Government of the United States; that they will not while so absent encamp, by day or night, within 10 miles of any of the main traveled routes or roads through the country to which they go, or of the military posts, towns, or villages therein, without the consent of the commanders of such military posts, or of the civil authorities of such towns or villages, and that henceforth they will and do hereby, relinquish all claims or rights in and to any portion of the United States or territories, except such as is embraced within the limits aforesaid, and more especially their claims and rights in and to the country north of the Cimarone River and west of the eastern boundary of New Mexico.

ART. 3. It is further agreed that until the Indians parties hereto have removed to the reservation provided for by the preceding article, in pursuance of the stipulations thereof, said Indians shall be, and they are hereby, expressly permitted to reside upon and range at pleasure throughout the unsettled portions of that part of the country they claim as originally theirs, which lies south of the Arkansas River, as well as the country embraced within the limits of the reservation provided for by the preceding article, and that they shall and will not go elsewhere, except upon the terms and conditions prescribed by the preceding article in relation to leaving said reservation: *Provided*, That the provisions of the preceding article in regard to encamping within 10 miles of main traveled routes, military posts, towns, and villages shall be in full force as to the privileges granted by this article: *And provided further*, That they, the said Indians, shall and will at all times, and without delay, report to the commander of the nearest military post the presence in or approach to said country of any hostile band or bands of Indians whatever.

ART. 4. It is further agreed by the parties hereto that the United States may lay off and build through the reservation, provided for by article 2 of this treaty, roads or highways as may be deemed necessary, and may also establish such military posts within the same as may be found necessary, in order to preserve peace among the Indians, and in order to enforce such laws, rules, and regulations as are now or may from time to time be prescribed by the President and Congress of the United States for the protection of the rights of persons and property among the Indians residing upon said reservation, and further, that in time of war such other military posts as may be considered essential to the general interests of the United States may be established: *Provided, however*, That upon the building of such roads, or establishment of such military posts, the amount of injury sustained by reason thereof by the Indians inhabiting said reservation shall be ascertained under direction of the President of the United States, and thereupon such compensation shall be made to said Indians as, in the judgment of the Congress of the United States, may be deemed just and proper.

ART. 5. The United States agree that they will expend annually, during the period of 40 years, from and after the ratification of this treaty, for the benefit of the Indians who are parties hereto, and of such others as may unite with them in pursuance of the terms hereof, in such manner and for such purposes as, in the judgment of the Secretary of the Interior for the time being, will best subserve their wants and interests as a people, the following amounts, that is to say, until such time as said Indians shall be removed to their reservations, as provided for by article two of this treaty, an amount which shall be equal to $10 per capita for each person entitled to participate in the beneficial provisions of this treaty; and from and after the time when such removal shall have been accomplished, an amount which shall be equal to $15 per capita for each person entitled as aforesaid. Such proportion of the expenditure provided for by this article as may be considered expedient to distribute in the form of annuities shall be delivered to said Indians as follows, viz: One-third thereof during the spring, and two-thirds thereof during the autumn of each year.

For the purpose of determining from time to time the aggregate amount to be expended under the provisions of this article, it is agreed that the number entitled to its beneficial provisions the coming year is 4,000, and that an accurate census of the Indians entitled shall be taken at the time of the annuity payment in the spring of each year by their agent or other person designated by the Secretary of the Interior, which census shall be the basis on which the amount to be expended the next ensuing year shall be determined.

ART. 6. The Indians parties to this treaty expressly covenant and agree that they will use their utmost endeavors to induce that portion of the respective tribes not now present to unite with them and accede to the provisions of this treaty, which union and accession shall be evidenced and made binding on all parties whenever such absentees shall have participated in the beneficial provisions of this treaty.

In testimony whereof the said commissioners on the part of the United States and the chiefs and headmen of the said bands of Comanche Indians and of the Kiowa Tribe of Indians, hereinbefore

referred to and designated in connection with their signatures, have hereunto subscribed their names and affixed their seals on the day and year first above written.

JOHN B. SANBORN, [SEAL.]
WM. S. HARNEY, [SEAL.]
KIT CARSON, [SEAL.]
WM. W. BENT, [SEAL.]
JAMES STEELE, [SEAL.]
THOS. MURPHY, [SEAL.]
J. H. LEAVENWORTH, [SEAL.]

Commissioners on the part of the United States.

Signed and sealed in presence of—
W. R. IRWIN, *Secretary.*
WM. T. KITTRIDGE.
D. C. MCNEIL.
JAS. S. BOYD.

Tab-e-nan-i-kah, or Rising Sun, chief of Yampirica, or Root Eater band of Camanches, for Paddy-wah-say-mer and Ho-to-yo-koh-wat's bands, his x mark. [SEAL.]
Esh-e-tave-pa-rah, or Female Infant, headman of Yampirica band of Camanches, his x mark. [SEAL.]
A-sha-hab-beet, or Milky Way, chief Penne-taha, or Sugar Eater band of Camanches, and for Co-che-te-ka, or Buffalo Eater band, his x mark. [SEAL.]
Queen-ah-e-vah, or Eagle Drinking, head chief of No-co-nee or Go-about band of Camanches, his x mark. [SEAL.]
Ta-ha-yer-quoip, or Horse's Back, second chief of No-co-nee or Go-about band of Camanches, his x mark. [SEAL.]
Pocha-naw-quoip, or Buffalo Hump, third chief of Penne-taka, or Sugar Eater band of Camanches, his x mark. [SEAL.]
Ho-to-yo-koh-wot, or Over the Buttes, chief of Yampirica band, his x mark. [SEAL.]
Parry-wah-say-mer, or Ten Bears, chief of Yampirica band, his x mark. [SEAL.]
Bo-yah-wah-to-yeh-be, or Iron Mountain, chief of Yampirica band of Camanches, his x mark. [SEAL.]
Bo-wah-quas-suh, or Iron Shirt, chief of De-na-vi band, or Liver Eater band of Camanches, his x mark. [SEAL.]
To-sa-wi, or Silver Brooch, head chief of Pennetaka band of Camanches, his x mark. [SEAL.]
Queil-park, or Lone Wolf, his x mark. [SEAL.]
Wah-toh-konk, or Black Eagle, his x mark. [SEAL.]
Zip-ki-yah, or Big Bow, his x mark. [SEAL.]
Sa-tan-ta, or White Bear, his x mark. [SEAL.]
Ton-a-en-ko, or Kicking Eagle, his x mark. [SEAL.]
Settem-ka-yah, or Bear Runs over a Man, his x mark. [SEAL.]
Kaw-pe-ah, or Plumed Lance, his x mark. [SEAL.]
To-hau-son, or Little Mountain, his x mark. [SEAL.]
Sa-tank, or Sitting Bear, his x mark. [SEAL.]
Pawnee, or Poor Man, his x mark. [SEAL.]
Ta-ki-bull, or Stinking Saddle Cloth, chief of the Kiowa tribe, his x mark. [SEAL.]

Now we have here the Red River running down, with the south bank of the stream as the south boundary of the United States, or rather the south boundary of the Kiowa and Comanche Indian Reservation. This treaty was had with the Kiowas and Comanches. Their reservation began up at the northeast corner of New Mexico and ran down to the southeast corner of New Mexico up to a point; and remember they approached Red River from the south, up to a point on the Red River, opposite the mouth of the north fork, and therefore they describe the south bank as the south line of the Kiowa and Comanche Indian Reservation.

Now, that particular reservation in there belonged to the Indians by virtue of aboriginal ownership. That was their land. Now, we come along to 1867, when we have another treaty with the Kiowa and Comanche Indians, wherein we fixed the middle of the stream as the south boundary of the Kiowa and Comanche Indian Reservation. It reads as follows:

TREATY WITH THE KIOWAS AND COMANCHES, OCTOBER 21, 1867.

TREATY BETWEEN THE UNITED STATES OF AMERICA AND THE KIOWA AND COMANCHE TRIBES OF INDIANS; CONCLUDED OCTOBER 21, 1867; RATIFICATION ADVISED JULY 25, 1868; PROCLAIMED AUGUST 25, 1868.

Andrew Johnson, President of the United States of America, to all and singular to whom these presents shall come, greeting:

[Note by the Department of State: The words of this treaty which are put in brackets with an asterisk are written in the original with black pencil, the rest of the original treaty being written with black ink.]

Whereas a treaty was made and concluded at the council camp, on Medicine Lodge Creek, 70 miles south of Fort Larned, in the State of Kansas, on the 21st day of October, in the year of our Lord 1867, by and between N. G. Taylor, Brevet Maj. Gen. William S. Harney, Brevet Maj. Gen. C. C. Augur, Brevet Maj. Gen. Alfred H. Terry, John B. Sanborn, Samuel F. Tappan, and J. B. Henderson, commissioners, on the part of the United States, and Satank (Sitting Bear), Ea-Tan-Ta (White Bear), Parry-Wah-Say-Men (Ten Bears), and Tep-Pe-Navon (Painted Lips), and other chiefs and headmen of the Kiowa and Comanche Tribes of Indians, on the part of said Indians, and duly authorized thereto by them, which treaty is in the words and figures following, to wit:

Articles of a treaty and agreement made and entered into at the council camp, on Medicine Lodge Creek, 70 miles south of Fort Larned, in the State of Kansas, on the 21st day of October, 1867, by and between the United States of America, represented by its commissioners duly appointed thereto, to wit, Nathaniel G. Taylor, William S. Harney, C. C. Augur, Alfred S. [H.] Terry, John B. Sanborn, Samuel F. Tappan, and J. B. Henderson, of the one part, and the confederated tribes of Kiowa and Comanche Indians, represented by their chiefs and headmen, duly authorized and empowered to act for the body of the people of said tribes (the names of said chiefs and headmen being hereto subscribed), of the other part, witness:

ARTICLE I. From this day forward all war between the parties to this agreement shall forever cease.

The Government of the United States desires peace, and its honor is here pledged to keep it. The Indians desire peace, and they now pledge their honor to maintain it. If bad men among the whites, or among other people subject to the authority of the United States, shall commit any wrong upon the person or property of the Indians, the United States will, upon proof made to the agent and forwarded to the Commissioner of Indian Affairs at Washington City, proceed at once to cause the offender to be arrested and punished according to the laws of the United States, and also reimburse the injured person for the loss sustained.

If bad men among the Indians shall commit a wrong or depredation upon the person or property of anyone, white, black, or Indians, subject to the authority of the United States and at peace therewith, the tribes herein named solemnly agree that they will, on proof made to their agent and notice by him, deliver up the wrongdoer to the United States, to be tried and punished according to its laws, and in case they willfully refuse so to do, the person injured shall be reimbursed for his loss from the annuities or other moneys due or to become due to them under this or other treaties made with the United States. And the President, on advising with the Commissioner of Indian Affairs, shall prescribe such rules and regulations for ascertaining damages under the provisions of this article as, in his judgment, may be proper; but no such damages shall be adjusted and paid until thoroughly examined and passed upon by the Commissioner of Indian Affairs and the Secretary of the Interior; and no one sustaining loss while violating or because of his violating the provisions of this treaty or the laws of the United States shall be reimbursed therefor.

ART. II. The United States agrees that [the *] following district of country, to wit, commencing at a point where the Washita River crosses the ninety-eighth meridian west from Greenwich; thence up the Washita River, in the middle of the main channel thereof, to a point 30 miles, by river, west of Fort Cobb, as now established; thence due west to the north fork of Red River, provided said line strikes said river east of the one hundredth meridian of west longitude; if not, then only to said meridian line, and thence south, on said meridian line, to the said north fork of Red River; thence down said north fork, in the middle of the main channel thereof, from the point where it may be first intersected by the lines above described, to the main Red River; thence down said river, in the middle of the main channel thereof, to its intersection with the ninety-eighth meridian of longitude west from Greenwich; thence north, on said meridian line, to the place of beginning, shall be, and the same is hereby, set apart for the absolute and undisturbed use and occupation of the tribes herein named and for such other friendly tribes or individual Indians as from time to time they may be willing [with the consent of the United States *] to admit among them; and the United States now solemnly agrees that no persons except those herein authorized so to do and except such officers, agents, and employees of the Government as may be authorized to enter upon Indian reservation in discharge of duties enjoined by law, shall ever be permitted to pass over, settle upon, or reside in the territory described in this article, or in such territory as may be added to this reservation, for the use of said Indians.

ART. III. If it should appear from actual survey or other satisfactory examination of said tract of land that it contains less than 160 acres of tillable land for each person who at the time may be authorized to reside on it under the provisions of this treaty, and a very considerable number of such persons shall be disposed to commence cultivating the soil as farmers, the United States agrees to set apart for the use of said Indians, as herein provided, such additional quantity of arable land adjoining to said reservation, or as near the same as it can be obtained, as may be required to provide the necessary amount.

ART. IV. The United States agrees at its own proper expense to construct at some place near the center of said reservation, where timber and water may be convenient, the following buildings, to wit: A warehouse or storeroom for the use of the agent in storing goods belonging to the Indians, to cost not exceeding $1,500; an agency building for the residence of the agent, to cost not exceeding $3,000; a residence for the physician, to cost not more than $3,000; and five other buildings, for a carpenter, farmer, blacksmith, miller, and engineer, each to cost not exceeding $2,000; also a schoolhouse or mission building so soon as a sufficient number of children can be induced by the agent to attend school, which shall not cost exceeding $5,000.

The United States agrees further to cause to be erected on said reservation, near the other buildings herein authorized, a good steam circular sawmill, with a gristmill and shingle machine attached, the same to cost not exceeding $8,000.

ART. V. The United States agrees that the agent for the said Indians in the future shall make his home at the agency building; that he shall reside among them, and keep an office open at all times, for the purpose of prompt and diligent inquiry into such matters of complaint by and against the Indians as may be presented for investigation under the provisions of their treaty stipulations, as also for the faithful discharge of other duties enjoined on him by law. In all cases of depredation on person or property he shall cause the evidence to be taken in writing and forwarded, together with his findings, to the Commissioner of Indian Affairs, whose decision, subject to the revision of the Secretary of the Interior, shall be binding on the parties to this treaty.

ART. VI. If any individual belonging to said tribes of Indians, or legally incorporated with them, being the head of a family, shall desire to commence farming, he shall have the privilege to select, in the presence and with the assistance of the agent then in charge, a tract of land within said reservation, not exceeding 320 acres in extent, which tract, when so selected, certified, and recorded in the Land Book as herein directed, shall cease to be held in common, but the same may be occupied and held in the exclusive possession of the person selecting it, and of his family so long as he or they may continue to cultivate it. Any person over 18 years of age, not being the head of a family, may in like manner select and cause to be certified to him or her, for purposes of cultivation, a quantity of land not exceeding 80 acres in extent, and thereupon be entitled to the exclusive possession of the same as above directed. For each tract of land so selected a certificate containing a description thereof and the name of the person selecting it, with a certificate indorsed thereon that the same has been recorded, shall be delivered to the party entitled to it, by the agent, after the same shall have been recorded by him in a book to be kept in his office, subject to inspection, which said book shall be known as the Kiowa and Comanche Land Book.

The President may at any time order a survey of the reservation, and, when so surveyed, Congress shall provide for protecting the rights of settlers in their improvements and may fix the character of the title held by each. The United States may pass such laws on the subject of alienation and descent of property and on all subjects connected with the government of the said Indians on said reservations, and the internal police thereof, as may be thought proper.

ART. VII. In order to insure the civilization of the tribes entering into this treaty, the necessity of education is admitted, especially by such of them as are or may be settled on said agricultural reservations; and they therefore pledge themselves to compel their children, male and female, between the ages of 6 and 16 years, to attend school; and it is hereby made the duty of the agent for said Indians to see that this stipulation is strictly complied with; and the United States agrees that for every 30 children between said ages who can be induced or compelled to attend school a house shall be provided, and a teacher, competent to teach the elementary branches of an English education, shall be furnished, who will reside among said Indians and faithfully discharge his or her duties as a teacher. The provisions of this article to continue for not less than 20 years.

ART. VIII. When the head of a family or lodge shall have selected lands and received his certificate as above directed, and the agent shall be satisfied that he intends in good faith to commence cultivating the soil for a living, he shall be entitled to receive seeds and agricultural implements for the first year not exceeding in value $100, and for each succeeding year he shall continue to farm for a period of three years more, he shall be entitled to receive seeds and implements as aforesaid not exceeding in value $25. And it is further stipulated that such persons as commence farming shall receive instruction from the farmer herein provided for, and whenever more than 100 persons shall enter upon the cultivation of the soil a second blacksmith shall be provided, together with such iron, steel, and other material as may be needed.

ART. IX. At any time after 10 years from the making of this treaty the United States shall have the privilege of withdrawing the physician, farmer, blacksmiths, carpenter, engineer, and miller herein provided for; but, in case of such withdrawal, an additional sum thereafter of $10,000 per annum shall be devoted to the education of said Indians, and the Commissioner of Indian Affairs shall, upon careful inquiry into the condition of said Indians, make such rules and regulations for the expenditure of said sum as will best promote the educational and moral improvement of said tribes.

ART. X. In lieu of all sums of money or other annuities provided to be paid to the Indians herein named, under the treaty of October 18, 1865, made at the mouth of the Little Arkansas, and under all treaties made previous thereto, the United States agrees to deliver at the agency house on the reservation herein named, on the 15th day of October of each year, for 30 years, the following articles, to wit:

For each male person over 14 years of age, a suit of good substantial woolen clothing, consisting of coat, pantaloons, flannel shirt, hat, and a pair of homemade socks. For each female over 12 years of age, a flannel skirt, or the goods necessary to make it, a pair of woolen hose, and 12 yards of calico, and 12 yards of "domestic."

For the boys and girls under the ages named, such flannel and cotton goods as may be needed to make each a suit as aforesaid, together with a pair of woolen hose for each; and in order that the Commissioner of Indian Affairs may be able to estimate properly for the articles herein named, it shall be the duty of the agent each year to forward him a full and exact census of the Indians on which the estimates from year to year can be based; and, in addition to the clothing herein named, the sum of $25,000 shall be annually appropriated for a period of 30 years to be used by the Secretary of the Interior in the purchase of such articles, upon the recommendation of the Commissioner of Indian Affairs, as from time to time the condition and necessities of the Indians may indicate to be proper; and if at any time within the 30 years it shall appear that the amount of money needed for clothing under this article can be appropriated to better uses for the tribes herein named, Congress may by law change the appropriation to other purposes, but in no event shall the amount of this appropriation be withdrawn or discontinued for the period named; and the President shall annually detail an officer of the Army to be present and attest the delivery of all the goods herein named to the Indians, and he shall inspect and report on the quantity and quality of the goods and the manner of their delivery.

ARTICLE XI. In consideration of the advantages and benefits conferred by this treaty and the many pledges of friendship by the United States, the tribes who are parties to this agreement hereby stipulate that they will relinquish all right to occupy permanently the territory outside of their reservation, as herein defined, but they yet reserve the right to hunt on any lands south of the Arkansas [river,*] so long as the buffalo may range thereon in such numbers as to justify the chase. [and no white settlements shall be permitted on any part of the lands contained in the old reservation as defined by the treaty made between the United States and the Cheyenne, Arapahoe, and Apache Tribes of Indians at the mouth of the Little Arkansas, under date of October 14, 1865, within three years from this date;*] and they [the said tribes,*] further expressly agree—

First. That they will withdraw all opposition to the construction of the railroad now being built on the Smoky Hill River, whether it be built to Colorado or New Mexico.

Second. That they will permit the peaceable construction of any railroad not passing over their reservation as herein defined.

Third. That they will not attack any persons at home, nor traveling, nor molest or disturb any wagon trains, coaches, mules, or cattle belonging to the people of the United States or to persons friendly therewith.

Fourth. They will never capture or carry off from the settlements white women or children.

Fifth. They will never kill nor scalp white men nor attempt to do them harm.

Sixth. They withdraw all pretense of opposition to the construction of the railroad now being built along the Platte River and westward to the Pacific Ocean; and they will not in future object to the construction of railroads, wagon roads, mail stations, or other works of utility or necessity which may be ordered or permitted by the laws of the United States. But should such roads or other works be constructed on the lands of their reservation, the Government will pay the tribes whatever amount of damage may be assessed by three disinterested commissioners to be appointed by the President for that purpose, one of said commissioners to be a chief or headman of the tribes.

Seventh. They agree to withdraw all opposition to the military posts now established in the western Territories.

ARTICLE XII. No treaty for the cession of any portion or part of the reservation herein described, which may be held in common, shall be of any validity or force as against the said Indians unless executed and signed by at least three-fourths of all the adult male Indians occupying the same, and no cession by the tribe shall be understood or construed in such manner as to deprive, without his consent, any individual member of the tribe of his rights to any tract of land selected by him as provided in Article III [VI] of this treaty.

ART. XIII. The Indian agent, in employing a farmer, blacksmith, miller, and other employees herein provided for, qualifications being equal, shall give the preference to Indians.

ART. XIV. The United States hereby agrees to furnish annually to the Indians the physician, teachers, carpenter, miller, engineer, farmer, and blacksmiths, as herein contemplated, and that such appropriations shall be made from time to time, on the estimates of the Secretary of the Interior, as will be sufficient to employ such persons.

ART. XV. It is agreed that the sum of $750 be appropriated for the purpose of building a dwelling house on the reservation for "Tosh-e-wa" (or the Silver Brooch), the Comanche chief, who has already commenced farming on the said reservation. And the sum of $500 annually for three years from date shall be expended in presents to the 10 persons of said tribes who in the judgment of the agent may grow the most valuable crops for the period named.

ART. XVI. The tribes herein named agree, when the agency house and other buildings shall be constructed on the reservation named, they will make said reservation their permanent home and they will make no permanent settlement elsewhere, but they shall have the right to hunt on the lands south of the Arkansas River, formerly called theirs, in the same manner, subject to the modifications named in this treaty, as agreed on by the treaty of the Little Arkansas, concluded the 18th day of October, 1865.

In testimony of which we have hereunto set our hands and seals on the day and year aforesaid.

N. G. TAYLOR, [SEAL.]
President of Indian Com'n.
WM. S. HARNEY, [SEAL.]
Bvt. Mjr. Gen.
C. C. AUGUR, [SEAL.]
Bvt. Majr. Gen.
ALFRED H. TERRY, [SEAL.]
Brig. and Bvt. Majr. Gen.
JOHN B. SANBORN. [SEAL.]
SAMUEL F. TAPPAN. [SEAL.]
J. B. HENDERSON. [SEAL.]

Attest: ASHTON S. H. WHITE, *Secretary.*

Kioways.

SATANK, or Sitting Bear (his x mark). [SEAL.]
SA-TAN-TA, or White Bear (his x mark). [SEAL.]
WA-TOH-KONK, or Black Eagle (his x mark). [SEAL.]
TON-A-EN-KO, or Kicking Eagle (his x mark). [SEAL.]
FISH-E-MORE, or Stinking Saddle (his x mark). [SEAL.]
MA-YE-TIN, or Woman's Heart (his x mark). [SEAL.]
SA-TIM-GEAR, or Stumbling Bear (his x mark). [SEAL.]
SIT-PAR-GA, or One Bear (his x mark). [SEAL.]
CORBEAU, or The Crow (his x mark). [SEAL.]
SA-TA-MORE, or Bear Lying Down. [SEAL.]

Comanches.

PARRY-WAH-SAY-MEN, or Ten Bears (his x mark). [SEAL.]
TEP-PE-NAVON, or Painted Lips (his x mark). [SEAL.]
TO-SA-IN, or Silver Brooch (his x mark). [SEAL.]
CEAR-CHI-NEKA, or Standing Feather (his x mark). [SEAL.]
HO-WE-AR, or Gap in the Woods (his x mark). [SEAL.]
TIR-HA-YAH-GUAHIP, or Horse's Back (his x mark). [SEAL.]
ES-A-NANACA, or Wolf's Name (his x mark). [SEAL.]
AH-TE-ES-TA, or Little Horn (his x mark). [SEAL.]
POOH-YAH-TO-YEH-BE, or Iron Mountain (his x mark). [SEAL.]
SAD-DY-YO, or Dog Fat (his x mark). [SEAL.]

Attest:

JAS. A. HARDIE,
Inspector General U. S. Army.
SAML. S. SMOOT,
U. S. Surveyor.
PHILIP MCCUSKER,
Interpreter.
J. H. LEAVENWORTH,
United States Indian Agent.
THOS. MURPHY,
Superintendent, Indian Affairs.
HENRY STANLEY,
Correspondent.
A. A. TAYLOR,
Assistant Secretary.
WM. FAYEL,
Correspondent.
JAMES O. TAYLOR,
Artist.
GEO. B. WILLIS,
Photographer.
C. W. WHITRAKER,
Trader.

And whereas the said treaty having been submitted to the Senate of the United States for its constitutional action thereon, the Senate did, on the 25th day of July, 1868, advise and consent to the ratification of the same, by a resolution in the words and figures following, to wit:

IN EXECUTIVE SESSION, SENATE OF THE UNITED STATES,
July 25, 1868.

Resolved (two-thirds of the Senators present concurring), That the Senate advise and consent to the ratification of the articles of a treaty and agreement made and entered into at the council camp on Medicine Lodge Creek, in the State of Kansas, between the United States and the confederated tribes of Kiowa and Comanche Indians.

Attest: GEO. C. GORHAM, *Secretary.*

Now, therefore, be it known that I, Andrew Johnson, President of the United States of America, do, in pursuance of the advice and consent of the Senate, as expressed in its resolution of the 25th of July, 1868, accept, ratify, and confirm the said treaty.

In testimony whereof I have hereto signed my name, and caused the seal of the United States to be affixed.

Done at the city of Washington this 25th day of August, in the year of our Lord 1868, and of the Independence of the United States of America the ninety-third.

[SEAL.] ANDREW JOHNSON.

By the President:
WILLIAM H. SEWARD,
Secretary of State.

Now do not forget that when these treaties were made in 1865 and 1867 they were made by such men as Brent and Kit Carson. All above that was prairie, and there were no lawyers out there. When the treaties were made in 1865 and 1867, they were made by laymen, and at that time they did not think

that the middle or half of the Red River was worth a dime. If the question had been presented to the Indians as to whether or not they would receive an extra bag of Bull Durham for the south half of the river, they would have taken it. They did not think it was worth anything. But the fact remains that the treaty of 1865 describes the south bank of the stream as the south boundary of the Kiowa and Comanche Indian Reservation, and when in 1867 we made the reservation smaller, we described the middle of the stream as the south boundary of the Kiowa and Comanche Indians as a nation, thereby, gentlemen, holding out on the Indian the south half of the stream.

Now, if there is a man or woman here that believes that it was the intention of the Government in 1867 to hold out the south half of that stream from the Indian, he being the aboriginal owner, he being recognized as the owner of that land in the treaty of 1865—if there is one here to-night who feels that it was the intention of Uncle Sam to hold out the south half of that stream from the Indians, then I will ask you to vote for this bill. [Applause.] Otherwise, you should vote against the bill and recognize the right of the Indian to that which has always been his.

The CHAIRMAN. The time of the gentleman from Oklahoma has expired. The question is on the first committee amendment.

The committee amendment was agreed to.

The CHAIRMAN. The Clerk will report the second committee amendment.

The Clerk read as follows:

Page 2, line 13, strike out the word "shall" and insert the word "may."

The committee amendment was agreed to.

The CHAIRMAN. The Clerk will report the next committee amendment.

The Clerk read as follows:

Page 2, after line 21, strike out lines 22, 23, 24, 25, and on page 3, lines 1 to 5, inclusive, and insert in lieu thereof the following: In case of conflicting claimants for permits or leases under this act, the Secretary of the Interior is authorized to grant permits or leases to one or more of them as shall me deemed just.

Mr. GENSMAN. Mr. Chairman, I rise in opposition to the amendment. I believe that any man who is a lawyer if he will take the first page of this abstract where in 1819 the United States Government and Spain fixed the south boundary of the stream as a line between Spain and the United States, who will look at page 2 of this abstract where the Government made a treaty with the Kiowa and Comanche Indians and affiliated bands in 1865, and describes the south bank of the stream as the south line of that reservation, and then you who are lawyers turn to the third page of the abstract and see where in 1867, through some process which I maintain that any man that looks at the instrument, taking into consideration that those representing the Government were laymen, will see was a mutual mistake on the part of the Indians and the Government, where the Government held out the south half of that stream which was owned by the Indians as aboriginal owners, which was recognized as being the property of the Indians in the treaty of 1865, and every other treaty we have had with them, you could not help coming to the conclusion that at this time the Government of the United States is holding the south half of the stream in trust for these Indians. It belongs to the Indians. They were the aboriginal owners of it, and in 1865 we said, Mr. Indian, this land is yours. But in 1867 through a mutual mistake we took that south half from him. It belongs to him and you can not afford this evening to give it away.

Mr. RAKER. Will the gentleman yield?

Mr. GENSMAN. Yes.

Mr. RAKER. If the gentleman's position is correct, irrespective of the disposition of what might be the proceedings hereafter by virtue of the suit in the Court of Claims, this bill takes from the Indians this land.

Mr. GENSMAN. Absolutely; and gives it away to the placer claimants. I dislike to oppose the placer claimants; they are good folks, but they are on Indian lands.

Mr. RAKER. If the contention of the gentleman from Oklahoma is legally sound, and it has been so stated by two eminent lawyers besides himself, why is it that this question has not been determined in the courts with all the litigation that has been carried on?

Mr. GENSMAN. Texas and Oklahoma and the Government got into litigation over these Indian lands, and the Supreme Court decided that they belonged to the Government, and the Indians were never consulted. The Indians were not parties to the suit, and, gentlemen of this Congress, their rights have never been determined. There is not a lawyer here that will say that you can determine a man's right unless you get him into court.

Mr. RAKER. It would seem from all that has been said that the possession of this land has been peaceful, and is it not a fact that after the Supreme Court appointed the receiver it was held at the point of the bayonet against both sides?

Mr. GENSMAN. Yes. I should not say bayonet. I should say six-shooter. Texas Rangers do not waste time with bayonets; they use six-shooters, I will state to the gentleman from California.

Mr. CARTER. Mr. Chairman, I can not see why the gentleman from Oklahoma will insist on repeating that the Indians' rights are involved in this bill. The Indians' rights are not involved any more than the Hottentots' rights. The gentleman from Oklahoma is a lawyer and knows that. I think my friend from Oklahoma has some other reason, some real reason, to be against the bill. I was hoping he would tell us what it was. There can be nothing to his contention. If these Indians have any rights on these lands, they are adequately preserved. I repeat, this bill deals only with the controversy between the actual producers and in no manner attempts to settle the landowners' rights. That was done by the court decision.

That the Secretary of the Interior is hereby authorized to adjust and determine the equitable claims of citizens of the Untied States and domestic corporations to lands and oil and gas deposits belonging to the United States and situated south of the medial line of the main channel of Red River, Okla., which lands were claimed and possessed in good faith by such citizens or corporations, or their predecessors in interest, prior to February 25, 1920, and upon which lands expenditures were made in good faith and with reasonable diligence in an effort to discover or develop oil or gas, by issuance of permits or leases to those found equitably entitled thereto.

In no place is the title to the land brought into the equation. The question dealt with here is the right of the different claimants, not to royalties but to all that other portion of the production belonging to the producers. Since this lets in all of such claimants I am for the bill, and I was against it until it was so amended. The only rights that the Indian has would be the same right that the Federal Government has, and that is to the royalty. A man who has lived in an oil country, as my friend from Oklahoma [Mr. GENSMAN] has, and as my good friend from Oklahoma [Mr. CHANDLER] has, and he is an oil man, will tell you that the only right that the holder of the title has which is involved in any way is the right to the royalty. He has no right to the proceeds but he has a right to the royalty of 12½ cents, and that is preserved here to the United States Government. These gentlemen are required to pay that for the past and they must pay that in the future. There can not be any legitimate contention that the right of the Indian is involved.

Mr. CHANDLER of Oklahoma. If the Indian has any right to this river bed, and he makes the claim to it in the courts, in the future, if that right is upheld, the royalty will be collected by the Government and given over to the Indian.

Mr. CARTER. My good friend knows that if the Indian has any right to this property, and he ever gets into the Supreme Court with that right—and I am not sure that he has no right—the Supreme Court will give it to him and when he gets it he will get exactly the same thing that the Federal Government is getting to-day, to wit, the royalty of 12½ cents, and that is what he is entitled to.

Mr. RAKER. Mr. Chairman, I move to strike out the last word.

Mr. BLANTON. Mr. Chairman, I make the point of order that all debate has been exhausted upon this amendment.

Mr. PARKS of Arkansas. Mr. Chairman, if we are going to sit here all night, I think we ought to have a quorum. I make the point of order that there is no quorum present.

The CHAIRMAN. The gentleman from Arkansas makes the point of order that there is no quorum present. The Chair will count. [After counting.] Eighty-nine Members are present, not a quorum.

Mr. SINNOTT. Mr. Chairman, I move that the committee do now rise.

Mr. MOORES of Indiana. And on that, Mr. Chairman, I demand tellers.

Tellers were ordered, and Mr. SINNOTT and Mr. PARKS of Arkansas were appointed to act as tellers.

The committee divided.

The CHAIRMAN. On this vote the tellers report that the ayes are 3 and the noes are 86. There are 11 gentlemen present who did not pass between the tellers. A quorum is present, and the committee refuses to rise.

Mr. PARKS of Arkansas. Mr. Chairman, I would like to understand about the 11 gentlemen who were present and did

not pass through the tellers, and under what kind of a system they are counted?

The CHAIRMAN. The Chair will see that the gentleman's rights are fully protected.

Mr. PARKS of Arkansas. I am sure the Chairman will, and I am appealing to the Chair in respect to those 11 gentlemen who did not pass between the tellers. I am inquiring about them.

Mr. BLAND of Indiana. Mr. Chairman, I demand the regular order.

Mr. PARKS of Arkansas. I am not inquiring about the rule.

The CHAIRMAN. The procedure is outlined under clause 3 of Rule XV, which provides:

> On the demand of any Member, or at the suggestion of the Speaker, the names of Members sufficient to make a quorum in the Hall of the House who do not vote shall be noted by the Clerk and recorded in the Journal, and reported to the Speaker with the names of the Members voting, and be counted and announced in determining the presence of a quorum to do business.

Mr. PARKS of Arkansas. That is the thing that Speaker Reed decided.

The CHAIRMAN. The names of the Members were checked and reported by the Clerk to the Chairman.

Mr. PARKS of Arkansas. I am not questioning the fact that these 11 gentlemen are here, but I would like to understand who they are. [Cries of "Regular order!"]

Mr. BLANTON. Mr. Chairman, I make the point of order that the gentleman is within his rights. He has a right to know who they are.

Mr. McSWAIN. Mr. Chairman, I will state that I am one of the 11. I did not care a darn which way the matter went, and I sat here and continued to read my book.

Mr. CHINDBLOM. Mr. Chairman, I demand the regular order.

The CHAIRMAN. The regular order is demanded, and the gentleman from California is recognized for five minutes.

Mr. BLANTON. Mr. Chairman, I make the point of order that the regular order is that the gentleman has a right to know who these gentlemen are, he being one of the tellers.

Mr. MONDELL. One of them was the gentleman from Texas.

Mr. BLANTON. Oh, no; he was not. The gentleman from Wyoming is just as much mistaken on that as he has been all through this Congress.

The CHAIRMAN. The committee refuses to rise, and the gentleman from California is recognized.

Mr. PARKS of Arkansas. Mr. Chairman, may I inquire whether those 11 men counted, one of whom distinguished himself by acknowledging he did not go through the tellers—why it is the result can not be reported in accordance with the rules?

The CHAIRMAN. Well, this is not in accordance with the rules, as the Chair interprets the rules, and the regular order is the gentleman from California [Mr. RAKER].

Mr. PARKS of Arkansas. A parliamentary inquiry. May I ask the Chair——

The CHAIRMAN. Will the gentleman from California yield?

Mr. CHINDBLOM. If it is taken out of his time.

The CHAIRMAN. The Chair will determine that.

Mr. RAKER. I will yield for a question only.

Mr. CHINDBLOM. I object unless it goes out of the gentleman's time.

Mr. PARKS of Arkansas. Mr. Chairman, a parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. MONDELL. Mr. Chairman, the gentleman from California can not be taken off his feet——

The CHAIRMAN. Does the gentleman yield?

Mr. RAKER. For a question only.

Mr. PARKS of Arkansas. Mr. Chairman——

Mr. RAKER. I can not yield.

The CHAIRMAN. The gentleman declines to yield.

Mr. PARKS of Arkansas. Mr. Chairman, a parliamentary inquiry.

The CHAIRMAN. The gentleman can not take the gentleman off his feet.

Mr. RAKER. Mr. Chairman, this bill has taken a very peculiar turn. I want to ask the gentleman from Oregon, the distinguished chairman of the Committee on Public Lands, does the gentleman understand that the Indians' rights under the litigation were involved?

Mr. SINNOTT. What is that?

Mr. RAKER. Is it the gentleman's understanding that these various litigations in the Supreme Court are proceedings in which the Indians' rights were involved?

Mr. SINNOTT. The question of the Indians' rights was not directly involved.

Mr. RAKER. Here is a bill, and one man says the Indians' rights are involved, and clearly if you lease the land and the land is Government land the Indians are not entitled to the land or the proceeds because it is Government land. Another gentleman claims, an authority on Indian affairs, that it is wholly immaterial what you do with this bill, because the Indians will get their rights. Now a very distinguished gentleman, chairman of the Committee on Indian Affairs, and one of the other members, say that they are looking after the question before the Committee on Indian Affairs and the Court of Claims to see what is going to become of the Indians.

Now is it possible, irrespective of the placer mining claims and the other claims involved in this matter, that when this matter is so involved relative to the rights of these Indians, that you are going to-night to pass a bill saying that they have no rights by opening the land for general leasing under the general leasing law and then some time hereafter come back and say, we are going to present a bill to the Court of Claims and let the Indians litigate the Federal Government to determine whether or not they are entitled to a certain percentage relative to the royalties on this particular tract of land? Clearly, gentlemen, that is not a proper way to legislate. There must be something back in regard to this pool of oil to try to get it through, and yet it is claimed that it is a bill for the benefit of the Indian to enable him to get his rights. You know, and I know, that he will never get a thing if you pass this bill. You know it is intended——

Mr. REED of New York. Will the gentleman yield?

Mr. RAKER. I will.

Mr. REED of New York. Is it not a fact that right south of this property in controversy there is a whole line of wells being pumped and the sooner you pass this bill the more oil there will be if the Indians have any rights, and if they are permitted to continue to pump the oil will be pumped out, and if the Indians do have any rights they will have no oil there at all?

Mr. RAKER. The same old story in regard to the Tea Pot Dome, the same old story of every oil-leasing claim, that there is somebody pumping out; for God's sake, give it to me. Dozens of corporations stand around—there is the oil in the public land—because they are fearful somebody else will get it. Do you know there is a receiver in possession of all this land?

Mr. REED of New York. I know that; will the gentleman yield?

Mr. RAKER. In just a moment. The point is to discharge the receiver as soon as the court disposes of it and take the money and take the land.

Mr. REED of New York. Will the gentleman yield?

Mr. RAKER. I will.

Mr. REED of New York. I am interested in the Indians, and I have no interest down there, and I know of nobody in my district who has, but I can see the difference. I can see that just as long as the cloud is hanging over there the people are going to pump the oil out; I can see the people outside close to it are going to get all the oil they can; and if the Indians have any rights the other people will get those rights while the passage of this bill is delayed.

Mr. RAKER. Delay this bill! When this litigation goes along for many years and when the people of the United States claim it and are trying to claim before this committee there is no oil developed in the territory there? That is the same old claim. Unless you go on a particular tract of land and bore a well within a particular tract of 20 acres some man claims that is an undeveloped territory. Nobody knows as to the oil; that is assumed and is a camouflage. The question before this committee, and you are overlooking the fact, is that these two claims are trying to take from the Government the entire tract of land.

The CHAIRMAN. The time of the gentleman has expired. The question is on agreeing to the third committee amendment.

The question was taken, and the third committee amendment was agreed to.

Mr. PARKS of Arkansas. Mr. Chairman, I ask for a division.

The CHAIRMAN. The gentleman from Arkansas calls for a division.

The committee divided; and there were—ayes 83, noes 1.

The CHAIRMAN. On this vote the ayes are 83 and the noes 1, and the amendment is agreed to.

Mr. PARKS of Arkansas. Mr. Chairman, I object to the vote because a quorum is not present. I make the point of order that a quorum is not present.

The CHAIRMAN. The gentleman from Arkansas makes the point of order that there is no quorum present. The Chair will count. [After counting.] One hundred and one gentlemen are present—a quorum. The amendment is agreed to, and the Clerk will read.

The Clerk read as follows:

SEC. 3. That not more than 160 acres shall be granted by leases or permits to any one person or corporation, except in those cases where two or more locations or claims have been assigned to one person or corporation, and in such cases not more than 640 acres shall be granted by leases or permits to any one person or corporation.

Mr. CONNALLY of Texas. Mr. Chairman, I offer an amendment to section 3.

The CHAIRMAN. The gentleman from Texas offers an amendment to section 3, which the Clerk will report.

The Clerk read as follows:

Amendment offered by Mr. CONNALLY of Texas: Page 3, line 11, after the word "corporation," strike out the comma, insert a period, and strike out the remainder of section 3.

The CHAIRMAN. The question is on agreeing to the amendment offered by the gentleman from Texas.

Mr. CONNALLY of Texas. Mr. Chairman and gentlemen of the committee, the amendment which I offered strikes out of section 3 the exception that in certain cases the maximum shall be 640 acres instead of 160 acres.

When this matter first arose the Secretary of the Interior transmitted to the chairman of the Committee on the Public Lands, the gentleman from Oregon [Mr. SINNOTT], a bill which was approved by the Secretary of the Interior. That bill provided that the maximum to be acquired by any one claimant or any one corporation should be 160 acres. We are in entire accord with that proposition. But when the Senate bill was introduced and passed through the Senate it provided that no claimant should receive more than 160 acres, except in cases where two or more locations or claims had been assigned to one person or corporation, and in such cases not more than 640 acres should be granted by leases or permits to any one person or corporation.

Mr. BUCHANAN. Mr. Chairman, will the gentleman yield?

Mr. CONNALLY of Texas. Yes.

Mr. BUCHANAN. Is it not a fact that under the placer mining laws and other laws of the United States there is no instance of any one concern ever having been allowed to locate on more than 160 acres?

Mr. CONNALLY of Texas. I will say to the gentleman that I am not as familiar with the placer law as some gentlemen are, but the gentleman from California [Mr. RAKER] advises me that under the placer mining law a claimant can take up only 20 acres.

Mr. RAKER. Eight individuals can join and take up 160 acres. That is the limit.

Mr. CONNALLY of Texas. Yes; that is the limit.

Mr. COLLINS. That is exactly what this provision provides.

Mr. CONNALLY of Texas. You provide for 640.

Mr. COLLINS. But four of them are joined.

Mr. CONNALLY of Texas. Under the placer laws you are permitted only one joinder of eight claims of 20 acres each.

Mr. BLANTON. This is four times as much.

Mr. CONNALLY of Texas. Now, gentlemen, I make this statement without intending any personal offense to anyone: I make the assertion that the Senate bill was so drawn as to make it inevitable that the Secretary of the Interior, in acting under this bill, would be forced to award practically all of the oil lands in that territory to one or perhaps two concerns.

While the language of the bill was general, the conditions which the bill laid down are such that there are no other companies except these two concerns that would fit into the holes in the wall which this bill proposes to bore in the wall. In other words, while the bill did not name the two concerns, it provided conditions that could be met by no other concern except the two affected.

The bill originally introduced in the House by the gentleman from Indiana [Mr. SANDERS] was practically the same bill as was introduced in the Senate. The House Committee on Public Lands has proposed two or three very valuable amendments which have already been adopted. One of those amendments provides that the Secretary of the Interior shall have discretion in the awarding of claims for land as between rival claimants, but under the original bill the plan was a deliberate plan to award by law all of the oil land, or practically all of it, to the Burke Divide Oil Co. and one other concern.

The amendment I have proposed is that we adopt as the language of this section the language proposed by the Secretary of the Interior, and that is that no one concern, corporation, or otherwise, shall be awarded——

The CHAIRMAN. The time of the gentleman from Texas has expired.

Mr. CONNALLY of Texas. Mr. Chairman, I ask leave to proceed for three minutes more.

The CHAIRMAN. The gentleman from Texas asks unanimous consent to proceed for three minutes more. Is there objection?

There was no objection.

Mr. CONNALLY of Texas. We propose to adopt the language proposed by the Secretary of the Interior. He is not interested. We want no special privileges. We want no special rights, but we want a general law of the United States to apply to all the claimants, and do not favor a bill in the special interest of one or two concerns and that bill so hogtied that no other concern can adapt itself to those conditions.

Mr. WURZBACH. Mr. Chairman, will the gentleman yield?

Mr. CONNALLY of Texas. Yes.

Mr. WURZBACH. Is it a fact that 640 acres would nearly exhaust all the proven territory of the field?

Mr. CONNALLY of Texas. Yes; I am glad the gentleman asked me that question. Six hundred and forty acres will take practically all of the oil-bearing territory in this whole area. I want this House to know what it is doing to-night. This land does not belong, under the Supreme Court ruling, to anybody on God's green earth except the United States Government.

The money in the registry of the Supreme Court does not belong to the claimants, does not belong to the Indians, it does not belong to the Texas claimants, it does not belong to the claimants from Oklahoma; but the money now in the registry of the Supreme Court belongs to the people of the United States. You are going to give it away, and in giving it away, gentlemen, to these claimants I want you to give it away in the manner proposed by the Secretary of the Interior. I want you to give it away in such a manner that all of these claimants will have an opportunity to present their equitable claims—because none of them has any legal standing—so that they will be able to go before the Secretary of the Interior and the Secretary of the Interior will be able to carry out his original purpose under the law, and that was that no claimant should be allowed to possess more than 160 acres. Now, let us look at section 2 we have just gone over, in line 13, wherein it says:

Leases and permits under this act may be granted to the assignees or successors in interest of the original locators or the original claimants in all cases where the original locators or original claimant have assigned or transferred their rights.

This bill proposes to recognize the transfer of rights when there were no rights. These claims were void from the beginning. When a man transfers his alleged placer claim he transfers something that had no existence; the transfer was void. So I think the House should adopt my amendment putting a limitation on the section so that the Secretary of the Interior can carry out his original purpose that no claimant shall be awarded more than 160 acres.

The CHAIRMAN. The time of the gentleman from Texas has expired.

Mr. SINNOTT. Mr. Chairman, I rise in opposition to this amendment. I do not want to say anything to prejudice any man's claim before the Secretary of the Interior, but there has been an attempt to draw a little halo around certain claimants, so I feel that it is my duty to the House to tell them the exact situation and what happened down there. There was one locator, Tom Testerman, an Oklahoma farmer, who associated with him a number of Oklahoma farmers and they filed on four claims, 640 acres. This man Testerman is as honest a man as the sun ever shone upon. He came before our committee. There was this Senate provision that would have given him an advantage, because beyond all question he was the first man that located upon this land.

Tom Testerman went on this land in December, 1918. He and his associates spent over $120,000 upon the land. They developed oil. He was left alone upon this property until the minute he developed oil, and then certain Texas Rangers swooped down upon him; they sat idly on the banks from April 30, 1919, till he brought in oil in August, 1919, and then they swooped down on him at the time his property was in the hands of the receiver of the Oklahoma courts. They came there armed men and drove Tom Testerman off this land after he had discovered oil, he and his farmer associates.

Now the Senate provision put in there, not instigated or inspired by Tom Testerman, because he believed in the theory of the equitable standard set forth in the Secretary of the Interior's first bill that they should all go before the Secretary of the Interior and there try out the matter of their respective equities. When this provision was considered by the House committee Tom Testerman voluntarily came before the committee and told the committee that he was willing to forego any advantage that provision might give him; he was not for

it in the first place; he was willing to place the entire matter in the hands of the Secretary of the Interior. That was satisfactory to the attorney for the Texas claimant who appeared before our committee. Now they are not willing to do what Tom Testerman is willing to do. They want to abridge and foreclose him from presenting three-quarters of his equitable claim before the Secretary of the Interior; of the four claims of himself and associates they demand that he abandon three. This man said to them, "Although I was there first in time, although under the law and under any legal or equitable rule, being first in time, I would have the first right, prior in tempore, potior in jure, I am willing to forego all that and go before the Secretary of the Interior and let our respective equities be decided."

Having gotten this much from Tom Testerman, now they want him absolutely to surrender three of his claims, and they want to see him denied the privilege of having the Secretary of the Interior adjudicate these four claims—claims that he developed, claims that the Texas claimants did not develop, but sat idly by on the bank while they watched him spend $120,000; then they came in and drove him off when he got oil. Not only that; they drove an employee—an agent of the United States Government—off of this property; they knocked him to the earth and so maltreated him that that man has become an imbecile, an idiot, since that time. These are the men that want to deprive Tom Testerman and his farmer associates of the right to let the Secretary of the Interior decide whether or not in equity and good conscience he is entitled to the four claims he developed. Mr. Chairman, I ask for a vote.

Mr. RAKER. Mr. Chairman, I offer the following amendment.

The CHAIRMAN. There is one amendment already pending.

Mr. RAKER. I offer this as an amendment to the amendment.

The CHAIRMAN. The gentleman from California offers an amendment, which the Clerk will report.

The Clerk read as follows:

Amendment offered by Mr. RAKER: Page 3, line 9, strike out the words "one hundred and sixty" and insert the words "twenty"; and in lines 13 and 14, strike out the words "six hundred and forty" and insert "one hundred and sixty."

Mr. SANDERS of Indiana. Mr. Chairman, I understand there is one amendment already pending.

Mr. RAKER. I offered this as a substitute.

Mr. SANDERS of Indiana. I do not think it is a substitute.

Mr. RAKER. I trust that my good friends will not become impatient over this matter.

Mr. BLANTON. They have not had dinner yet.

Mr. RAKER. Sometimes men get hungry when they are trying to loot the Treasury, before they break in through the various doors of the safe. You can get the first one open sometimes, but it is pretty hard to get the second one.

Mr. CARTER. The gentleman from California ought to know.

Mr. RAKER. Mr. Chairman, I call attention to the report of the Secretary of the Interior. The distinguished chairman stated that the oil leasing bill applied to this. The oil leasing bill has no relation to lands of this character in any way, shape, or form, so that this is no guide. The Secretary of the Interior said:

The policy of leasing oil and gas deposits of the United States, as provided in the act of Congress of February 25, 1920, appears to have been a general policy intended to be applied to all lands or deposits owned by the United States, except certain reserved lands specifically excepted therefrom in section 1 of the act. The remedial sections of said law are, however, apparently not applicable to this situation. Section 18 of the act, which extends relief to placer claimants who had brought in producing wells upon their claims, is clearly not applicable to this situation, for it is limited to lands which had been withdrawn by Executive order "issued September 27, 1909."

The claim was made a few moments ago about Senator Testerman standing there drilling wells. There were eight on each claim, and Tom Testerman had seven partners in each instance. They did not bring any oil in except on one claim, and the other people claimed the land, and they had a right to stand there and see what was being done; and when they found that their substance was being taken they went to the courts of Texas and got an order and sent the Texas Rangers there to protect their property. Then the Oklahoma fellows got into a suit, and both sides got into trouble, and they were toting their guns on both sides, and finally the Supreme Court stepped in and took possession. This is what the Secretary of the Interior said:

I therefore transmit for the consideration of your committee and for introduction, if you deem it advisable, draft of a bill designed to authorize the Secretary of the Interior to consider and adjust the equitable claims mentioned in this report. As the claims are purely equitable, and the development, except that carried on by the receiver, necessarily limited, it is my opinion the permits or leases should be as nearly as practicable in 20-acre units, and that no one person or corporation should secure in the aggregate more than 160 acres, including, so far as possible, the lands they have improved or developed; that where this is impracticable they should be allotted an area elsewhere. Of the oil and gas already produced to the extent that the proceeds have not been devoted to expenses incident to the receivership, it is believed that these claimants should pay, as is provided in the general leasing act, 12½ per cent royalty on past production, and that as to future production the provisions of the general leasing act should apply.

You appeal to your departments. They have gone over this matter. They went over it fully, and they say that the claims are purely equitable, and that no one individual or corporation should be given more than 160 acres, but here you come and ask the Congress at this time in the session and at this hour of the night, without any notice to anybody, to give 640 acres of valuable oil land to these people without a legal claim on earth.

Mr. CHANDLER of Oklahoma. Did the other fellow have a legal claim?

Mr. RAKER. What other fellow?

Mr. CHANDLER of Oklahoma. The other fellow that the gentleman is talking about.

Mr. RAKER. What do you mean? What other fellow?

Mr. CHANDLER of Oklahoma. Whom are you talking for? The Government is given the royalty.

Mr. RAKER. I am talking for the American people.

Mr. CHANDLER of Oklahoma. I think it has been demonstrated by the gentleman forcibly this evening——

Mr. RAKER. Here they are trying to take the property from the Government.

The CHAIRMAN. The time of the gentleman from California has expired.

Mr. SINNOTT. Mr. Chairman, I rise in opposition to the amendment just to say one thing. This bill does not embrace the only oil adjustment and settlement that Congress has had to make since I have been here. A little more than two years ago we adjusted an oil-location controversy in the State of California, the State of the gentleman who just spoke, who objects to the few acres being given to Tom Testerman and his group of farmers.

Mr. CONNALLY of Texas. Mr. Chairman, will the gentleman yield?

Mr. SINNOTT. No. Two years ago when we approached California, "out where the hand clasps a little stronger, out where the smile dwells a little longer," we gave them 3,200 acres, and all that time we heard no protest from the gentleman from California [Mr. RAKER].

Mr. Chairman, I move that all debate on this section and all amendments thereto be now closed.

Mr. SUMNERS of Texas. Mr. Chairman, I move to amend that by making it 20 minutes.

The CHAIRMAN. The question is on the amendment of the gentleman from Texas that all debate upon the section and all amendments thereto close in 20 minutes.

The question was taken; and on a division (demanded by Mr. SUMNERS of Texas) there were—ayes 27, noes 75.

Mr. SUMNERS of Texas. I ask for tellers on the vote.

The CHAIRMAN. Seventeen gentlemen have arisen, not a sufficient number, and the amendment is disagreed to. The motion recurs on the motion of the gentleman from Oregon that debate on this section and all amendments thereto do now close.

Mr. PARKS of Arkansas. I make the point of order there is no quorum present.

The CHAIRMAN. The Chair has just counted a quorum.

The question was taken, and the Chair announced the ayes had it.

Mr. PARKS of Arkansas. I ask for a division.

The CHAIRMAN. The gentleman from Arkansas asks for a division.

The committee divided; and there were—ayes 84, noes 14.

Mr. PARKS of Arkansas. I object to the vote, because a quorum is not present, and I make the point of order there is no quorum present.

The CHAIRMAN. The Chair will count. [After counting.] One hundred and twenty-three gentlemen are present, a quorum.

So the motion was agreed to.

Mr. UPSHAW. Mr. Chairman, a parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. UPSHAW. Is there any way for us to vote and get supper and still be regarded as patriotic?

The CHAIRMAN. While that may be pertinent, that is not a parliamentary inquiry. The question is on the perfecting amendment offered by the gentleman from California.

The question was taken, and the Chair announced the noes appeared to have it.

Mr. SUMNERS of Texas. Division!

The committee divided; and there were—ayes 10, noes 85.

So the amendment was rejected.

The CHAIRMAN. The question now recurs on the amendment offered by the gentleman from Texas.

The question was taken, and the Chair announced the noes seemed to have it.

Mr. CONNALLY of Texas. I ask for a division.

The committee again divided; and there were—ayes 30, noes 84.

Mr. CONNALLY of Texas. Mr. Chairman, I desire to offer an amendment. Amend page 3, line 11, after the word "accept," by inserting the following: "*Provided, however*, That all of said leases shall be awarded to Tom Testerman." [Laughter.] I desire to be heard.

Mr. SANDERS of Indiana. I make the point of order debate has been closed.

Mr. CONNALLY of Texas. Not on this amendment.

The CHAIRMAN. Yes. The question is on the amendment offered by the gentleman from Texas.

The question was taken, and the amendment was rejected.

The Clerk read as follows:

SEC. 4. That each lessee shall be required to pay as royalty to the United States an amount equal to the value at the time of production of 12½ per cent of all oil and gas produced by him prior to the issuance of the lease, except oil or gas used on the property for production purposes or unavoidably lost; and shall be required to pay to the United States a royalty of not less than 12½ per cent of all oil and gas produced by him after the issuance of the lease, except oil and gas used on the property for production purposes or unavoidably lost. Of the proceeds of the oil and gas that have been produced or that may hereafter be produced by the receiver of said property, who was appointed by the Supreme Court of the United States, after deducting one-half of the cost of the said receivership but not including the cost of drilling and operating the wells, 12½ per cent shall be paid to the United States, and the residue shall be paid to the person or corporation to whom may be granted a lease of the land on which said oil and gas were produced: *Provided*, That the Secretary of the Interior is authorized and directed to take such legal steps as may be necessary and proper to collect from any person or persons who shall not be awarded a permit or lease under this act an amount equal to the value of all oil and gas produced by him or them from any of said lands prior to the inclusion of said property in the receivership, except oil or gas used on the property for production purposes or unavoidably lost and except other reasonable and proper allowances for the expenses of production: *Provided further*, That of the amount so collected 12½ per cent shall be reserved to the United States as royalty, and the balance after deducting the expense of collection shall be paid over to the person or persons awarded permits or leases under this act as their interests may appear.

The committee amendment was read, as follows:

Page 3, line 16, after the word "pay," insert the words "as royalty."

Mr. HUDSPETH. Mr. Chairman, I desire to offer an amendment to strike out the last word. I am not going to filibuster against this bill, but, Mr. Chairman, whenever my good friend from Oregon refers to Texas Rangers swooping down on this poor old farmer, Tom Testerman, from Oklahoma, I want to say that the Texas Rangers went there under court order, under order of the Supreme Court of Texas, one lone ranger up there to keep the people from Oklahoma from taking Grayson County. We had already given them Greer County, one of the best counties, and the supreme court sent one lone ranger to stop that horde from Oklahoma.

My friend CARTER, from Oklahoma, makes the statement there are no leases in the State of Texas. I want to state to my friend that your old farmer Tom Testerman and his horde of Oklahomans never dreamed of going into the bed of the Red River until they saw the smoke rising from the burning fields on the top of the bluff.

I want to state to my friend from Oregon [Mr. SINNOTT] and to the Oklahoma people that Texas passed a law declaring the river bed in Texas a State line and permitting leases before your people ever heard that there was a Red River bed.

Mr. LOWREY. Mr. Chairman, will the gentleman yield for a minute?

Mr. HUDSPETH. With pleasure.

Mr. LOWREY. I would like them to tell us what was the underlying thought in the decision of the Supreme Court when they decided that SAM RAYBURN and his county were worth the efforts of only one ranger or that it would take only one ranger to whip the Oklahoma crowd? [Laughter.]

Mr. HUDSPETH. They decided that they had given Oklahoma voluntarily Greer County and they decided that Greer County could not be taken.

I want to state that all that the people who have claims in Texas ask for is a limitation of 160 acres, as is provided under the amendment, so that no corporation, as was admitted by my friend from Oregon [Mr. SINNOTT] would be permitted under the terms of your bill, can receive an award of every acre of this land, and the claimants in Texas, who are numerous, would stand no chance.

Mr. DRIVER. Mr. Chairman, will the gentleman yield?

Mr. HUDSPETH. Yes.

Mr. DRIVER. You say that the gentleman in Texas should waive his equity in order that somebody else there could get the fruits?

Mr. HUDSPETH. It seems that they want to waive their rights in favor of Tom Testerman. [Laughter.]

Mr. DRIVER. It does not say that Tom Testerman or anyone else shall get it; but it says if Tom Testerman and his friends are entitled to the equity they shall be fully safeguarded.

Mr. HUDSPETH. Let me say to the gentleman that none of this class of claimants ever had any real claim. They have only squatter rights. The Land Office failed to issue permits to them. They had only squatter rights.

The CHAIRMAN. The question is on agreeing to the amendment.

The amendment was agreed to.

The CHAIRMAN. The Clerk will report the second amendment.

The Clerk read as follows:

Page 4, line 2, after the word "property," strike out the words "who was."

The CHAIRMAN. The question is on agreeing to the amendment.

The amendment was agreed to.

The CHAIRMAN. The Clerk will report the third amendment.

Mr. PARKS of Arkansas. Mr. Chairman, I would just like to inquire how I should proceed in order to secure a division on the vote that was taken. I do not want to do anything that is unseemly, but I addressed the Chair to ask the Chair for a division.

The CHAIRMAN. A demand is all that is required.

Mr. PARKS of Arkansas. It does not seem to have any effect.

The CHAIRMAN. The Chair has not heard any demand for a division on these amendments.

Mr. PARKS of Arkansas. I do not want to speak so loud as to disturb everybody in the neighborhood. [Laughter.]

The CHAIRMAN. The Chair did not hear the gentleman. The Clerk will report the third amendment.

The Clerk read as follows:

Page 4, line 3, after the word "States," strike out "after deducting one-half of the cost of the said receivership but not including the cost of drilling and operating the wells."

Mr. CONNALLY of Texas. Mr. Chairman, I want to congratulate the committee on its generosity in this particular. We find an amendment here on page 4 wherein they are actually not going to award to Mr. Testerman one-half of the cost of the receivership in this case. I never heard of Mr. Testerman until the chairman of the Committee on Public Lands over there awhile ago mentioned him on the floor of this House. I had thought that this bill provided for the matter of dealing with corporations.

Mr. CARTER. Mr. Chairman, will the gentleman yield?

Mr. CONNALLY of Texas. Yes.

Mr. CARTER. Mr. Testerman is in full accord with the gentleman. He has just told me—just a few minutes ago—that he thought the gentleman from Texas [Mr. CONNALLY] was a fine gentleman and that he had offered a splendid amendment when he wanted to give him all the land. [Laughter.]

Mr. HERRICK. Mr. Chairman, will the gentleman yield?

Mr. CONNALLY of Texas. I do not want Oklahoma to take up all my time. One gentleman from Oklahoma asked me to yield, and another wants me to yield, and another is sitting up in the gallery there.

Mr. HERRICK. Will the gentleman yield? I want to give him some information. [Laughter.]

Mr. CONNALLY of Texas. I can not yield. I understand that Mr. Testerman is in the gallery. One gentleman gives me a kind warning to the effect that he has in his pocket a six-shooter as long as my leg. I want to say to him that I am more in favor of him now than before I heard of that. [Laughter.] But, gentlemen, I never heard of Mr. Testerman until the chairman of this committee made mention of him in his speech. I had thought that this bill was dealing with corporations and big concerns which had gone there and developed oil. My information was that it was the Burke Divide Oil Co. and the Melish interests that proposed to get, not one 20-acre lot, but the entire field of oil. That is what I thought, but, lo and behold, the chairman comes out in the open.

This Mr. Testerman that took how many claims—how many times will 20 go into 640? Thirty-two times—and the chairman of the committee during his speech never referred to any other

claimant that went onto that land except good old Tom Testerman. And how many times did Testerman squat on that land? Thirty-two times. [Laughter and applause.] And every time he squatted he got 20 acres of United States land under this bill.

Now, gentlemen, that is the nut in the coconut. What does it mean? It means that men are sitting in the gallery watching and waiting for the passage of this bill. They are anxious for the time to come. They have got influence enough to make this House sit here and miss its dinner. It means that Tom Testerman and his associates have enough influence with the Republican side of the House and those in control of the bill to hold us here in the closing days of the session, when legislation of general application is pressing—to do what? To pass a general law? This is couched in general terms, but is it intended to be of general application? No; what it is intended to do is to do something for good old Tom Testerman, the ubiquitous, the curious, multiple man that can in good faith and at the same time squat on 32 separate claims under the placer mining laws that have no existence in law, that have no existence in fact, that have no existence in equity, and will have no existence whatever except by the fiat of this Congress when it legislates out of the Treasury of the people of the United States several million dollars now in the registry of the Supreme Court and takes from the public domain 640 acres of land and places it in the vest pocket of good old Tom Testerman. [Laughter and applause.]

Mr. SINNOTT. Mr. Chairman, I move that all debate on this amendment and all amendments now close.

The CHAIRMAN. The gentleman from Oregon moves that all debate on this section and all amendments thereto now close.

The question was taken; and on a division (demanded by Mr. BLANTON) there were 81 ayes and 3 noes.

So the motion was agreed to.

Mr. GENSMAN. Mr. Chairman, I have an amendment.

The CHAIRMAN. The committee amendments will first be disposed of. The question is on the committee amendment.

The committee amendment was agreed to.

The CHAIRMAN. The Clerk will report the next committee amendment.

The Clerk read as follows:

Page 4, line 6, at the beginning of the line, insert the words "as royalty."

The committee amendment was agreed to.

The CHAIRMAN. The Clerk will report the next committee amendment.

The Clerk read as follows:

Page 4, line 6, after the word "residue," insert the words "after deducting and paying the expenses of litigation incurred by the United States and the expenses of the receivership."

The CHAIRMAN. The question is on the committee amendment.

The question was taken; and on a division (demanded by Mr. PARKS of Arkansas) there were 94 ayes and 1 no.

Mr. PARKS of Arkansas. I object to the vote, because a quorum has not voted.

The CHAIRMAN. Evidently there is a quorum present.

Mr. PARKS of Arkansas. Ninety-four and one?

The CHAIRMAN. But there were more than six Members present who did not vote.

So the amendment was agreed to.

The CHAIRMAN. The gentleman from Oklahoma [Mr. GENSMAN] offers an amendment, which the Clerk will report.

The Clerk read as follows:

Page 4, line 25, after the word "appear," strike out the period and insert the following: "*Provided further*, That all royalties received as aforesaid by the United States be held in trust for such Indians as shall, in the judgment of the Secretary of the Interior, be entitled thereto."

The CHAIRMAN. The question is on the amendment offered by the gentleman from Oklahoma.

Mr. GENSMAN. Mr. Chairman, I ask unanimous consent to be heard for five minutes.

The CHAIRMAN. The gentleman from Oklahoma asks unanimous consent to proceed for five minutes. Is there objection?

Mr. HERRICK. I object.

Mr. RAKER. Mr. Chairman, I make the point of order that the amendment is not germane to the legislation in the bill.

The CHAIRMAN. The Chair thinks the amendment is germane and overrules the point of order. The question is on the amendment offered by the gentleman from Oklahoma.

The question was taken; and on a division (demanded by Mr. RAKER) there were—ayes 22, noes 79.

So the amendment was rejected.

The Clerk read as follows:

SEC. 5. That except as otherwise provided herein the applicable provisions of the act of Congress approved February 25, 1920, entitled "An act to permit the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain," shall apply to the leases and permits granted hereunder, including the provisions of sections 35 and 36 of said act relating to the disposition of royalties: *Provided*, That after the adjudication and disposition of all applications under this act any lands and deposits remaining unappropriated and undisposed of shall, after date fixed by order of the Secretary of the Interior, be disposed of in accordance with the provisions of the said act of February 25, 1920: *Provided further*, That upon the approval of this act the Secretary of the Interior is authorized to take over and operate existing wells on any of such lands pending the final disposition of applications for leases and permits, and to utilize and expend in connection with such administration and operation so much as may be necessary of moneys heretofore impounded from past production or hereafter produced, and upon final disposition of applications for and the issuance of leases and permits, after deducting the expenses of administration and operation and payment to the United States of the royalty herein provided, to pay the balance remaining to the person or company entitled thereto: *And provided further*, That out of the 10 per cent of money hereafter received from royalties and rentals under the provisions of this act and paid into the Treasury of the United States and credited to miscellaneous receipts, as provided by section 35 of the said act of February 25, 1920, the Secretary of the Interior is authorized to use and expend such portion as may be required to pay the expense of administration and supervision over leases and permits and the products thereof.

Mr. HERRICK. Mr. Chairman, I do not think I want the full five minutes I am entitled to, because I think about three will do, as a small horse is soon curried. I merely rose to reply to some of the insinuations that have been cast by the gentleman from Texas [Mr. CONNALLY] upon my old friend and neighbor, Tom Testerman. If the gentleman from Texas would pluck a few quills from the wings of his imagination and stick them in the tail of his judgment, he would never have made that statement. [Applause and laughter.] He undertakes to say that Tom Testerman squatted thirty-two times on a certain tract of land. Tom Testerman is only one squatter out of a company of squatters. I have not seen all of them, but I know, personally, I have seen one other beside him, a lady named Miss Wright, and I hope she will get her rights.

I want to remind you of the fact that it is not because it is Tom Testerman that this has hurt some people here, but it is because Tom happens to be a farmer instead of a corporation attorney or some wealthy stockholder in a corporation. I venture to say that if he had not been a farmer at least two-thirds of the objections that we have heard here to-night would not have been put forth on this floor, but it seems that whenever the word "farmer" pops up, it is just like shaking a red rag in the face of a bull—they charge at it. They do not stop to realize that if it was not for the farmer, the man who plows and sows and reaps, all others would have nothing to do. I object to having the farmer made a target, and I also object to the insinuations that have been cast upon my old friend Tom Testerman, because I know him personally and I can vouch for him. His neighbors are not sitting around with shotguns watching for him, and no man is putting out any bear traps for him. [Applause and laughter.]

The Clerk read as follows:

SEC. 6. That nothing in this act shall be construed to interfere with the possession by the Supreme Court of the United States, through its receiver or receivers, of any part of the lands described in section 1 of this act, nor to authorize the Secretary of the Interior to dispose of any of said lands or oil or gas deposits involved in litigation now pending in the Supreme Court of the United States, until the final disposition of said proceeding. The authority herein granted to the Secretary of the Interior, to take over and operate oil wells on said lands, shall not become effective until the said lands shall be, by the Supreme Court of the United States, discharged from its possession. And nothing in this act shall be construed to interfere with the jurisdiction, power, and authority of the Supreme Court of the United States to adjudicate claims against its said receiver, to direct the payment of such claims against the said receiver as may be allowed by the said court, to settle the said receiver's accounts, and to continue the receivership until, in due and orderly course, the same may be brought to an end. The Supreme Court of the United States is hereby authorized, upon the termination of the said receivership, which the Attorney General is hereby directed to apply for and secure at the earliest practicable date, to direct its receiver to pay to the Secretary of the Interior all funds that may at that time remain in the hands of the said receiver; and when said funds shall be paid to the Secretary of the Interior the same shall be administered as in this act provided.

Mr. SINNOTT. Mr. Chairman, I offer the following committee amendment, which I send to the desk.

The Clerk read as follows:

Amendment offered by Mr. SINNOTT: Page 7, line 6, after the word "funds," insert "derived from oil and gas produced from lands of the United States."

The CHAIRMAN. The question is on agreeing to the amendment.

Mr. SUMNERS of Texas. Mr. Chairman, I rise in opposition to the amendment. I realize that it is late and you are all tired, but I am going to take only a few minutes, and I hope to have the attention of the House for just a short time. A motion to

recommit will be offered, I understand, the purpose of which will be to limit to 160 acres the right of each person or corporation under this bill. I hope that motion will be seriously considered. During the discussion which we have had it has developed that nobody has any legal interest here. We are dealing now with this as an original proposition, in so far as the creation of legal rights is concerned, and we are dealing with a valuable public property. I submit to the House that if you were dealing with this as an original proposition, expressing your legislative judgment as to the disposition of this property, you would not agree that not more than 160 acres of this valuable property go to any one individual or corporation. It has not been disposed of yet. It is being disposed of now, in so far as the expression of legislative judgment and authority are concerned. I submit that the Congress, expressing its legislative judgment with regard to so valuable a public interest in property, ought not to say that more than 160 acres of the land should go to one corporation or person. Equity does not require and no citizen has the right to ask that there be given to him as a matter of equity that which he has attempted to appropriate in violation of the law, that which, if a law had preceded the taking, authorized him to take at all, it would not have authorized him to take to the extent of his attempted appropriation.

The Members of this House are not concerned with a dispute between people who happen to live in Texas, Oklahoma, Indiana, or anywhere else. You are concerned simply with the discharge of a legislative duty in regard to public property. This property is just as completely within the ownership of the Government as if no human being had ever put his foot upon it. If you would not have consented to the granting of more than 160 acres of this valuable public property to one individual or to one corporation prior to the taking of illegal possession of it—I mean possession without legal right—I submit that there is no sufficient reason in equity or public policy why you should do so now.

Equity does not require and it can not be claimed in morals, it seems to me, that it is the duty of the Government to convert an equitable claim, whatever it may be, into a legal title, beyond that which the law would have granted had the law preceded rather than followed the taking of possession. That, it seems to me, is the real question upon which the judgment of the House is to be taken.

The CHAIRMAN. The question is on the committee amendment offered by the gentleman from Oregon.

The amendment was agreed to.

Mr. BLANTON. Mr. Chairman, I offer the following amendment, which I send to the desk.

The Clerk read as follows:

Amendment by Mr. BLANTON: Page 6, in lines 8 and 9, strike out the words "nothing shall interfere with the Supreme."

Mr. BLANTON. Mr. Chairman, that motto is all through this bill—"Nothing shall interfere with the supreme." It is the supreme few pushing this bill to passage. The gentleman from Oregon [Mr. SINNOTT] says that this bill affects one man down in Oklahoma. Some of our friends on the other side said it affects one corporation. Others have gone a little bit further and they have said that it may affect two corporations, and we have been the last four hours passing on this kind of legislation at the close of Congress that could affect at most two corporations, possibly, and an individual.

This House has now been in continuous session for 8 hours and 45 minutes. The balance of the day was taken up by the great Committee on Banking and Currency in the consideration of a bill that affects two States—Massachusetts and New York—when that same Banking and Currency Committee has a favorable report, I understand a unanimous report, on the rural credits bill, a measure that vitally affects every farmer in the United States. From the entire other side of the aisle it remains for the distinguished gentleman from Oklahoma [Mr. HERRICK] to speak for the farmer.

What has become of the promised rural credits bill? Why did they put it off until to-morrow? Why, it was on the program received this morning——

Mr. HERRICK. Will the gentleman yield?

Mr. BLANTON. Always to my distinguished friend.

Mr. HERRICK. I would like to make this answer to the distinguished gentleman.

Mr. BLANTON. I want the gentleman to have all the time he wants while his renowned Oklahoma constitutent, Tom Testerman, is in the gallery.

Mr. HERRICK. I want to answer. The gentleman asked what has become of the farmers' rural credits bill, and I want to say to the gentleman from Texas that I do not care what has become of the rural credits bill if we can get a bill through this House that will give the farmer better prices and enable him to get out of debt instead of getting deeper in debt. [Laughter and applause.]

Mr. BLANTON. Well, I have been hopeful that on some of these famous aerial excursions that our friend from Oklahoma has been taking lately that he might discover some means of finding proper markets for the farmer, for Congress owes it to the farmer to provide markets, and I want to say this——

Mr. HERRICK. I want to reply to the gentleman from Texas that no flight of fact I have accomplished will equal the gentleman from Texas' flight of fancy. [Laughter.]

Mr. BLANTON. When I received the daily program from the majority leader this morning, as all of you receive it every morning, and I saw that upon that program for to-day's work was the farmers' rural credits bill, I felt rejoiced and I thought that at last it was going to be passed into a law; but the Committee on Banking and Currency sidetracked the farmers' bill and took up most of the day on a bill that affected the two States of New York and Massachusetts, and then we have spent all of the time to-night on a bill that refers, they say, to one rich oil man and maybe to two corporations. That is the way valuable time is frittered away.

Mr. CONNALLY of Texas. It is to help the farmer, because this man is a farmer.

Mr. BLANTON. I want to help all the farming farmers, not merely a rich oil farmer from Oklahoma.

Mr. SINNOTT. Mr. Chairman, I move that all debate on this section and all amendments thereto do now close.

The motion was agreed to.

Mr. GENSMAN. Mr. Chairman, I offer an amendment.

The CHAIRMAN. Without objection, the pro forma amendment will be withdrawn. The Clerk will report the amendment.

The Clerk read as follows:

Amendment offered by Mr. GENSMAN: Page 7, line 10, after the period insert: "*Provided further*, That all royalties received as aforesaid by the United States be held in trust for such Indians as shall in the judgment of the United States be entitled thereto."

Mr. GENSMAN. Mr. Chairman——

The CHAIRMAN. All debate is closed.

Mr. GENSMAN. I ask unanimous consent to be heard. This is one amendment I want to present to this House.

The CHAIRMAN. Is there objection?

Mr. HERRICK. I object.

The CHAIRMAN. Objection is heard. The question is on the amendment offered by the gentleman from Oklahoma.

The question was taken, and the amendment was rejected.

The Clerk read as follows:

SEC. 7. That the Secretary of the Interior is authorized to prescribe the necessary and proper rules and regulations and to do any and all things necessary to carry out and accomplish the purposes of this act.

Mr. SANDERS of Indiana. Mr. Chairman, I move to strike out the last word. Mr. Chairman and gentlemen of the committee, I shall not talk but a very few moments. I introduced a bill which is identical with the Senate bill we have been considering, but the bill passed the Senate first, and therefore we are considering the Senate bill. But I can not let this opportunity go by without saying a word in reference to the work of the Committee on the Public Lands of the House in connection with this measure. It has not been an easy task, but that committee sat during hearing which occupied many days, and I hold in my hand the printed hearings covering 474 pages. I have never seen any committee go more conscientiously into any subject than did the Committee on the Public Lands into the subject matter of this measure. Being interested in the bill myself, because many of my constituents are interested in it, I have followed it from its inception. I attended the hearings, and I merely rose to say I am very grateful to the members of that committee for their arduous and conscientious work, and I am also grateful to my colleagues in the House, who have stayed away from their dinner and helped to make a quorum, so that this just measure could be considered.

Mr. GENSMAN. Mr. Chairman, I want to say this in conclusion on this bill: I have absolutely no reason for opposing this bill so far as the personnel of those who would be benefited by the bill are concerned. I have known Tom Testerman, the Cincinnatus who left his plow standing in the field—this farmer who stepped down to Red River and spent $120,000 on oil production, and all these pioneer oil men and women down there who have gone to Red River and developed the field down there, and I assure you I want to say of Mr. Testerman and every one of these promoters——

SEVERAL MEMBERS. And other farmers.

Mr. GENSMAN. That I am very much in favor of helping them along in any way I can so far as it is possible; but I maintain, gentleman, that this land belongs to the Indians, and

I am not going to be a party to robbing them, and I want to say this to you, that to-night you are giving away some land here that belongs to Kiowa and Comanche and affiliated tribes of Indians, and some time, somewhere along the line the Congress of the United States may at this late hour of a hard day's labor be requested to authorize the Kiowas and Comanche Indians to go down here to the Court of Claims and present their claims to the court for this land which you are taking away from these Indians to-night, the aboriginal owners, the owners who were recognized in every treaty that the United States Government has ever had with the Indians. You are to-night giving away the lands that rightfully belong to them under every treaty, and you are giving it away to some men and women who have gone down and squatted upon this land who have no right to it whatever except by virtue of wildcatting on the land, and some time the Court of Claims of the United States will render judgment in favor of these Indians and your posterity will go down into their pockets and will pay for the error that you commit this night. There is absolutely no question in the world about it.

You can not by any process of legerdemain or otherwise give away property which an abstract of title shows belongs to the Indian as this does. If you stopped and looked at it a moment you would understand that. And you can not foreclose the Indian of all rights that he may have, especially in view of the fact that the United States Government is in the position of guardian and the Indian in the position of ward. Of course, time is passing. You are incorporating in this bill a provision whereby this 12½ per cent——

Mr. HERRICK. Mr. Chairman, will the gentleman yield for just a question?

Mr. GENSMAN. No; I do not yield.

You have in this bill a provision for 12½ per cent. You ought to incorporate in the bill, at the point where the 12½ per cent is provided as royalties, that is to be paid to the Kiowa and Comanche Indians and the affiliated bands. Even Mr. CARTER, who spoke in support of the bill, said that there was no question but that the Indians were entitled to this land, and that I merely had the wrong view of the law in the case.

I differ with Mr. CARTER. I am a lawyer, and he is not. I may be wrong and he may be right, or I may be right and he may be wrong. But nevertheless, gentlemen, if you get down to the final analysis you can not help coming to the conclusion that this property belongs to the Indians.

Mr. ROACH. Mr. Chairman, will the gentleman yield?

Mr. GENSMAN. Yes.

Mr. ROACH. I agree with the gentleman in the conviction that the Indians are entitled to this property. Is there anything in this bill that would prevent the Indians from going into the courts and asserting their rights?

Mr. GENSMAN. The Indians, in order to present their claim against the Government of the United States, will have to come and get a jurisdictional bill through Congress so that they can sue the Government.

Mr. ROACH. They can get this money out of the Treasury just as well as to assert their title to the land, can they not?

Mr. GENSMAN. I do not know as to that. To say the least, the amendments I have offered giving the Indians the royalties to this land should be adopted. Why not settle this now?

Mr. RAKER. Mr. Chairman, I desire to be recognized.

Mr. SINNOTT. Mr. Chairman——

The CHAIRMAN. The gentleman from Oregon, the chairman of the committee, is recognized.

Mr. SINNOTT. Mr. Chairman, the gentleman from Oklahoma [Mr. GENSMAN] has reiterated from time to time that we are taking land away from the Indians. We are not taking an acre of land away from the Indians. The only land that is referred to in this bill, the only oil and gas deposits that are referred to in this bill, are land and oil and gas deposits belonging to the United States, and have been so declared by the Supreme Court.

The gentleman from Oklahoma expressed great solicitude to-night regarding the interests of his Indian constituents in Oklahoma; he is to be commended for his vigilance, but I think he is unduly alarmed. Uncle Sam will not permit the Indians to be defrauded.

Mr. Chairman, I move that all debate on this section and all amendments thereto be now closed.

The CHAIRMAN. The gentleman from Oregon moves that all debate on this section and all amendments thereto be now closed. The question is on agreeing to that motion.

The question was taken, and the motion was agreed to.

Mr. RAKER rose.

The CHAIRMAN. Does the gentleman from California desire to offer an amendment?

Mr. RAKER. Yes; I offer an amendment.

The CHAIRMAN. The gentleman from California offers an amendment, which the Clerk will report.

The Clerk read as follows:

Amendment offered by Mr. RAKER: Page 7, line 13, strike out the words "and to do any and all things."

The CHAIRMAN. The question is on agreeing to the amendment.

Mr. RAKER. Mr. Chairman, I ask unanimous consent that I may proceed for five minutes.

Mr. SINNOTT. I object.

The CHAIRMAN. Objection is heard. The question is on agreeing to the amendment offered by the gentleman from California.

The question was taken, and the amendment was rejected.

Mr. SINNOTT. Mr. Chairman, I move that the committee do now rise and report the bill to the House with the amendments, with the recommendation that the amendments be agreed to and that the bill as amended do pass.

Mr. JONES of Texas. Mr. Chairman, I offer a new section, to be known as section 8, "That this act shall take effect on July 1, 1923."

The CHAIRMAN. The Clerk will report the amendment offered by the gentleman from Texas.

The Clerk read as follows:

Amendment offered by Mr. JONES of Texas: Page 7, after line 14, add a new section, to be known as section 8, as follows:
"SEC. 8. That this act shall take effect on July 1, 1923."

Mr. SINNOTT. Mr. Chairman, I move that all debate on this amendment and all amendments thereto do now close.

The motion was agreed to.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Texas [Mr. JONES].

The question was taken, and the amendment was rejected.

Mr. SINNOTT. Mr. Chairman, I move that the committee do now rise and report the bill to the House with sundry amendments, with the recommendation that the amendments be agreed to and that the bill as amended do pass.

The motion was agreed to.

Accordingly the committee rose; and Mr. CAMPBELL of Kansas, Speaker pro tempore, resumed the chair.

Mr. CONNALLY of Texas. Mr. Speaker, I make the point that no quorum is present.

Mr. SINNOTT. A parliamentary inquiry, Mr. Speaker.

The SPEAKER pro tempore. The gentleman will state it.

Mr. SINNOTT. Is the previous question ordered under the rule?

The SPEAKER pro tempore. It is.

Mr. CONNALLY of Texas. The point of no quorum prevents any report on this bill.

The SPEAKER pro tempore. The gentleman from Texas is within his rights. The previous question was ordered when the rule was adopted.

Mr. BLANTON. It does not take effect automatically until we get a quorum.

The SPEAKER pro tempore. That question is not before the House.

Mr. CONNALLY of Texas. I make the point that there is no quorum and therefore the Chair can not receive the report of the Committee of the Whole until we have a quorum.

Mr. MONDELL. The House is not in session and a quorum is present until the Chairman of the Committee has reported.

Mr. BLANTON. I make the point of order that the moment the Speaker takes his place in the chair that the House is automatically in session.

Mr. MONDELL. Gentlemen who want to defeat the agricultural rural credits bill can not filibuster, because in any event if we adjourn at this moment the first business in the morning will be the continuation of the business now before the House.

A parliamentary inquiry, Mr. Speaker. If the House adjourns now, in the morning the report of the Chairman of the Committee will be received, the previous question having been ordered?

The SPEAKER pro tempore. That is true; the previous question is provided for in the rule.

ENROLLED BILLS SIGNED.

Mr. RICKETTS, from the Committee on Enrolled Bills, reported that they had examined and found truly enrolled bills of the following titles, when the Speaker pro tempore signed the same:

H. R. 11637. An act authorizing the Secretary of the Interior to approve indemnity selections in exchange for described granted school lands;

H. R. 10816. An act to fix the annual salary of the collector of customs for the district of North Carolina;

H. R. 13032. An act to authorize the sale of the Montreal River Lighthouse Reservation, Mich., to the Gogebic County board of the American Legion, Bessemer, Mich.;

H. R. 10003. An act to further amend and modify the war risk insurance act;

H. R. 7010. An act for the relief of the Southern Transportation Co.;

H. R. 10287. An act for the relief of John Calvin Starr;

H. R. 9309. An act for the relief of the Neah Bay Dock Co., a corporation;

H. R. 14081. An act granting the consent of Congress to the Valley Transfer Railway Co., a corporation, to construct three bridges and approaches thereto across the junction of the Minnesota and Mississippi Rivers, at points suitable to the interests of navigation;

H. R. 14249. An act for the relief of the owners of the American schooner *Mount Hope;*

H. R. 11579. An act to amend section 1 of an act approved January 11, 1922, entitled "An act to permit the city of Chicago to acquire real estate of the United States of America";

H. R. 11738. An act for the relief of Maj. Russell B. Putnam;

H. R. 8921. An act for the relief of Ellen McNamara;

H. R. 8046. An act for the relief of Themis Christ;

H. R. 13272. An act granting a license to the city of Miami Beach, Fla., to construct a drain for sewage across certain Government lands;

H. R. 11340. An act to advance Maj. Ralph S. Keyser on the lineal list of officers of the United States Marine Corps so that he will take rank next after Maj. John R. Henley;

H. R. 2702. An act for the relief of J. W. Glidden and E. F. Hobbs;

H. R. 4421. An act for the relief of John Albrecht;

H. R. 962. An act for the relief of the heirs of Robert Laird McCormick, deceased;

H. R. 1290. An act for the relief of Cornelius Dugan;

H. R. 7967. An act granting certain lands to Escambia County, Fla., for a public park;

H. R. 7053. An act to grant certain lands to the city of Canon City, Colo., for a public park;

H. R. 10047. An act for the relief of Frances Martin;

H. R. 370. An act for the relief of Charles W. Mugler;

H. R. 6954. An act fixing rates of postage on certain kinds of printed matter;

H. R. 6423. An act to detach Pecos County, in the State of Texas, from the Del Rio division of the western judicial district of Texas and attach same to the El Paso division of the western judicial district of said State;

H. J. Res. 47. Joint resolution authorizing the Secretary of the Navy to receive for instruction at the United States Naval Academy, at Annapolis, Mr. Jose A. de la Torriente, a citizen of Cuba;

H. R. 10179. An act for the relief of Americus Enfield;

H. R. 13827. An act relating to the sinking fund for bonds and notes of the United States;

H. R. 11603. An act to validate for certain purposes the revocation of discharge orders of Lieut. Col. James M. Palmer and the orders restoring such officer to his former rank and command;

H. R. 12751. An act to convey to the Big Rock Stone & Construction Co. a portion of the hospital reservation of United States Veterans' Hospital No. 78 (Fort Logan H. Roots) in the State of Arkansas;

H. R. 13326. An act in reference to a national military park at Yorktown, Va.;

H. R. 9944. An act for the relief of Vincent L. Keating;

H. R. 7322. An act for the relief of John F. Homen;

H. R. 6538. An act for the relief of Grey Skipwith;

H. R. 8448. An act for the relief of Joseph Zitek;

H. R. 6358. An act authorizing the accounting officers of the Treasury to pay to A. E. Ackerman the pay and allowances of his rank for services performed prior to the approval of his bond by the Secretary of the Navy;

H. R. 9862. An act for the relief of the Fred E. Jones Dredging Co.;

H. R. 5251. An act for the relief of Ruperto Vilche; and

H. R. 13793. An act making appropriations for the military and nonmilitary activities of the War Department for the fiscal year ending June 30, 1924, and for other purposes.

SENATE BILLS REFERRED.

Under clause 2 of Rule XXIV Senate bills of the following titles were taken from the Speaker's table and referred to their appropriate committees, as indicated below:

S. 2792. An act granting a pension to John L. Livingston; to the Committee on Pensions.

S. 4622. An act to remit the duty on a carillon of bells to be imported for St. Ann's Church, Kennebunkport, Me.; to the Committee on Ways and Means.

ADJOURNMENT.

Mr. MONDELL. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 9 o'clock and 10 minutes p. m.) the House adjourned until to-morrow, Wednesday, February 28, 1923, at 12 o'clock noon.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS.

Under clause 2 of Rule XIII,

Mr. MADDEN: Committee on Appropriations. H. R. 14435. A bill making appropriations to provide additional compensation for certain civilian employees of the Governments of the United States and the District of Columbia during the fiscal year ending June 30, 1924; without amendment (Rept. No. 1724). Referred to the Committee of the Whole House on the state of the Union.

Mr. McKENZIE: Committee on Military Affairs. S. 4216. An act authorizing the sale of real property no longer required for military purposes; with amendments (Rept. No. 1726). Referred to the Committee of the Whole House on the state of the Union.

Mr. BLAND of Indiana: Committee on Industrial Arts and Expositions. S. J. Res. 274. A joint resolution to provide for the participation of the United States in the observance of the one hundredth anniversary of the enunciation of the Monroe doctrine and of the ninety-second anniversary of the death of James Monroe; with amendments (Rept. No. 1728). Referred to the Committee of the Whole House on the state of the Union.

Mr. SCOTT of Tennessee: Committee on the Public Lands. H. R. 12953. A bill to establish a national park in the State of Virginia; without amendment (Rept. No. 1729). Referred to the Committee of the Whole House on the state of the Union.

Mr. SNYDER: Committee on Indian Affairs. H. R. 13452. A bill to ascertain and settle the title to lands and waters in New Mexico belonging to the Pueblo Indians, to preserve their ancient customs, rites, and tribal ceremonies, and providing an exclusive forum wherein all controversies as to the rights of the Pueblo Indians may be adjudicated; with an amendment (Rept. No. 1730). Referred to the Committee of the Whole House on the state of the Union.

REPORTS OF COMMITTEES ON PRIVATE BILLS AND RESOLUTIONS.

Under clause 2 of Rule XIII,

Mr. MILLER: Committee on Military Affairs. H. R. 13104. A bill for the relief of Orrin F. Strickland; without amendment (Rept. No. 1725). Referred to the Committee of the Whole House.

Mr. JEFFERS of Alabama: Committee on the Public Lands. H. R. 11873. A bill authorizing the Secretary of the Interior to sell and patent to George M. Bailey certain lands; with an amendment (Rept. No. 1727). Referred to the Committee of the Whole House.

Mr. HULL: Committee on Military Affairs. S. 930. An act for the relief of Thomas J. Temple; without amendment (Rept. No. 1732). Referred to the Committee of the Whole House.

PUBLIC BILLS, RESOLUTIONS, AND MEMORIALS.

Under clause 3 of Rule XXII, bills, resolutions, and memorials were introduced and severally referred as follows:

By Mr. MADDEN: A bill (H. R. 14435) making appropriations to provide additional compensation for certain civilian employees of the Governments of the United States and the District of Columbia during the fiscal year ending June 30, 1924; committed to the Committee of the Whole House on the state of the Union.

By Mr. PORTER: A bill (H. R. 14436) to authorize the President in certain cases to reduce fees for the visé of passports; to the Committee on Foreign Affairs.

By Mr. BURDICK: A bill (H. R. 14437) to amend section 5908, United States Compiled Statutes, 1916 (R. S., sec. 3186, as amended by act of Mar. 1, 1879, ch. 125, sec. 3, and act of Mar. 4, 1913, ch. 166); to the Committee on the Judiciary.

By Mr. FOSTER: A bill (H. R. 14438) making provision for the erection of a monument to the memory of Robert Morris, to be located in the city of Washington, D. C.; to the Committee on the Library.

By Mr. REED of West Virginia: A resolution (H. Res. 566) authorizing the Commissioners of the District of Columbia to investigate and report at the beginning of the Sixty-eighth Congress upon the advisability or necessity of legislation looking to an increase in the number of judges of the police court of the District of Columbia; to the Committee on the District of Columbia.

By the SPEAKER (by request): Memorial of the Legislature of the State of Oregon petitioning Congress to pass an act whereby all revenue secured by the Federal Government from leases on Sand Island shall be turned over to the treasurer of the State of Oregon; to the Committee on Military Affairs.

Also (by request), memorial of the Legislature of the State of California favoring the establishment of a forest experiment station in California; to the Committee on Agriculture.

By Mr. BECK: Memorial of the Legislature of the State of Wisconsin petitioning Congress to enact legislation relating to forest products; to the Committee on Agriculture.

By Mr. McARTHUR: Memorial of the Legislature of the State of Oregon, urging Congress to enact legislation guaranteeing the price of wheat; to the Committee on Agriculture.

By Mr. PATTERSON of New Jersey: Memorial of the Legislature of the State of New Jersey, urging reorganization and certain corrections of administration in the second district of the United States Veterans' Bureau; to the Committee on Interstate and Foreign Commerce.

By Mr. RAKER: Memorial of the Legislature of the State of California, relative to the immigration bill; to the Committee on Immigration and Naturalization.

Also, memorial of the Legislature of the State of California, relative to the establishment of a forest experiment station in California and indorsing Senate bill 3031 and House bill 11249; to the Committee on Appropriations.

PRIVATE BILLS AND RESOLUTIONS.

Under clause 1 of Rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Mr. CANTRILL: A bill (H. R. 14439) granting a pension to Austin Price; to the Committee on Pensions.

By Mr. KOPP: A bill (H. R. 14440) granting an increase of pension to Ellen L. Stone; to the Committee on Invalid Pensions.

By Mr. SNELL: A bill (H. R. 14441) granting an increase of pension to Cleopatra Soper; to the Committee on Invalid Pensions.

By Mr. TEN EYCK: A bill (H. R. 14442) for the relief of Emma B. McOmber; to the Committee on Claims.

By Mr. IRELAND: A resolution (H. Res. 565) authorizing the appointment of a legislative clerk at the rate of $1,800 per annum; to the Committee on Accounts.

PETITIONS, ETC.

Under clause 1 of Rule XXII, petitions and papers were laid on the Clerk's desk and referred as follows:

7467. By Mr. BRITTEN: Petition of representatives of the American Assyrians in Chicago, Ill., urging Congress to permit the remaining Assyrians outside of the United States to immigrate into this country; to the Committee on Immigration and Naturalization.

7468. By Mr. CONNOLLY of Pennsylvania: Petition from sundry citizens of the fifth Pennsylvania district, indorsing House Joint Resolution 412, providing for the relief of the distress and famine conditions in Germany and Austria; to the Committee on Foreign Affairs.

7469. By Mr. FESS: Petition of 165 members of the congregation of the United Presbyterian Church, of Sebring, Ohio, to amend the preamble of the Constitution of the United States; to the Committee on the Judiciary.

7470. By Mr. KELLY of Pennsylvania: Petition of General Putnam Council, Sons and Daughters of Liberty, of Pittsburgh, Pa., urging restriction of immigration; to the Committee on Immigration and Naturalization.

7471. Also, petition of citizens of Allegheny County, Pa., opposing the prohibition of transportation and sale of firearms; to the Committee on Interstate and Foreign Commerce.

7472. By Mr. KISSEL: Petition of the Woman's Republican Club, New York City, N. Y., urging an amendment to the Constitution of the United States to limit or prohibit the labor of children; to the Committee on the Judiciary.

7473. Also, petition of New York State Association of Builders, Rochester, N. Y., urging the passage of Senate bill 4304, which provides for the admission of immigrants regardless of the legal quota; to the Committee on Immigration and Naturalization.

7474. By Mr. RAKER: Petition of Mrs. Nettie Bowe, past president Admiral Glass Auxiliary, No. 26, United Spanish War Veterans, indorsing and urging support of House bill 13298 and Senate bill 4142; also Julia A. Martin Auxiliary, No. 2, United Spanish War Veterans, of Oakland, Calif., indorsing and urging the passage of House bill 13298 and Senate bill 4142; to the Committee on Interstate and Foreign Commerce.

7475. Also, resolution of the National Association of Manufacturers, 50 Church Street, New York City, relative to the provisions of the Sterling-Lehlbach bill (H. R. 8928); to the Committee on Reform in the Civil Service.

7476. Also, petition of Karl H. M. Gardner, chief priest and master supreme of the Holy Rosikrucian Church, of San Francisco, Calif., relative to Treasury Decision 3391, providing for securing sacramental wines; to the Committee on the Judiciary.

7477. Also, petition of the First National Bank of Alturas, Calif., urging support of House conferees on bank tax bill (H. R. 11939) and to reject the Senate amended bill; to the Committee on Banking and Currency.

7478. Also, resolution adopted by the Siskiyou County Pomona Grange, of Siskiyou County, Calif., relative to the early completion of the best and most feasible highway from ocean to ocean; to the Committee on Roads.

7479. By Mr. ROUSE: Petition of 230 citizens of Campbell County, Ky., protesting against the enactment of any legislation toward the change of the present immigration law that will permit admission of aliens other than provided by present laws; to the Committee on Immigration and Naturalization.

7480. By Mr. WINSLOW: Petition of residents of Massachusetts and California, opposing House bill 4388; to the Committee on the District of Columbia.

SENATE.

WEDNESDAY, *February 28, 1923.*

The Senate met at 11 o'clock a. m.

The Chaplain, Rev. J. J. Muir, D. D., offered the following prayer:

Our Father and our fathers' God, we turn our thoughts to Thee with the beginning of the day's duties and seek Thy wisdom. We ask that whatever may come before this body in connection with its high responsibilities, wisdom may always be dispensed unto it, and that each one under the consciousness of his charge may fulfill the duties for the highest interests of the country and to the glory of Thy great name. We ask in Jesus' name. Amen.

The reading clerk proceeded to read the Journal of the proceedings of the legislative day of Monday, February 26, 1923, when, on request of Mr. CURTIS and by unanimous consent, the further reading was dispensed with and the Journal was approved.

CALL OF THE ROLL.

Mr. CURTIS. Mr. President, I suggest the absence of a quorum.

The VICE PRESIDENT. Let the roll be called.

The reading clerk called the roll, and the following Senators answered to their names:

Ashurst	Fernald	Ladd	Sheppard
Ball	Fletcher	Lenroot	Shields
Bayard	Frelinghuysen	Lodge	Shortridge
Borah	George	McCormick	Smoot
Brandegee	Gerry	McKellar	Spencer
Brookhart	Glass	McKinley	Stanley
Bursum	Gooding	McLean	Sterling
Calder	Hale	McNary	Sutherland
Cameron	Harreld	Moses	Swanson
Capper	Harris	Norbeck	Townsend
Caraway	Harrison	Norris	Wadsworth
Colt	Heflin	Oddie	Walsh, Mass.
Couzens	Hitchcock	Overman	Walsh, Mont.
Culberson	Johnson	Pepper	Warren
Cummins	Jones, N. Mex.	Phipps	Watson
Curtis	Jones, Wash.	Pittman	Weller
Dial	Kellogg	Poindexter	Willis
Dillingham	Kendrick	Ransdell	
Edge	Keyes	Reed, Pa.	
Ernst	King	Robinson	

Mr. PHIPPS. I desire to announce the absence of my colleague [Mr. NICHOLSON] on account of illness.

Mr. KING. I wish to announce that the senior Senator from South Carolina [Mr. SMITH] is detained on account of official business.

The VICE PRESIDENT. Seventy-seven Senators have answered to their names. A quorum is present.